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OFFICE OF THE MAYOR  
SAN FRANCISCO

TREASURE ISLAND DEVELOPMENT AUTHORITY  
410 AVENUE OF THE PALMS,  
Bldg. One, 2nd Floor, Treasure Island  
San Francisco, CA 94130  
(415) 274-0660 FAX (415) 274-0299  
WWW.SFGOV.ORG/TREASUREISLAND



WILLIE LEWIS BROWN, JR.

TREASURE ISLAND DEVELOPMENT AUTHORITY  
MEETING AGENDA  
April 9, 2003 1:30 P.M.

Room 400, City Hall  
1 Dr. Carlton Goodlett Place

Willie L. Brown, Jr., Mayor

DIRECTORS

Claudine Cheng, Chair  
William Fazande, Vice-Chair  
John Elberling  
Marcia Rosen

Gerald Green  
Susan Po-Rufino  
Doug Wong

Annemarie Conroy, Executive Director  
Peter Summerville, Commission Secretary

ORDER OF BUSINESS

1. Call to Order and Roll Call
2. Approval of Minutes (*Action Item*)
3. Report by Executive Director Annemarie Conroy (*Discussion Item*)
  - Report on access to Treasure Island including public use last month
  - Status of environmental clean up
  - Report on short-term leases
  - Report on San Francisco-Oakland Bay Bridge/Caltrans issues
  - Report on Treasure Island community issues
  - Report on Citizens Advisory Board
  - Report on TIHDI
  - Financial Report
  - Legislation/hearings affecting Treasure Island
4. Communications (*Discussion Item*)
5. Ongoing Business by Directors (*Discussion Item*)
6. General Public Comment (*Discussion Item*)

\*\*\*In addition to General Public Comment (Item #6), Public Comment will be held during each item on the agenda.\*\*\*
7. Election of Officers for the Treasure Island Development Authority Board (*Action Item*)
8. Resolution Authorizing the Executive Director to Execute a Contract with Toolworks, Inc., a Member Organization of the Treasure Island Homeless Development Initiative, and a California Public Benefit Corporation, for an Amount Not-to-Exceed \$125,000 to Provide Janitorial and Other Building Maintenance Services for the Period May 1, 2003 to February 29, 2004 (*Action Item*)

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9. Resolution Authorizing the Executive Director to Execute a Contract with Rubicon Enterprises, a Member Organization of the Treasure Island Homeless Development Initiative, and a California Public Benefit Corporation, for an Amount Not-to-Exceed \$950,000 to Provide Grounds Maintenance and Other Services for the Period May 1, 2003 to April 30, 2004 (*Action Item*)
10. Resolution Authorizing the Executive Director to Execute an Amendment to the Child Care Master Lease with United States Navy to Incorporate Land Use Controls Associated with Use of the Property (*Action Item*)
11. Resolution Authorizing the Executive Director to Execute an Amendment to the Child Care Center Sublease with Kidango to Incorporate Land Use Controls Related to Use of the Property (*Action Item*)
12. Resolution Authorizing the Executive Director to Execute an Amendment to the Sublease with Rex Liu for the Photo Booth to Extend the Term of the Month-to-Month Sublease an Additional 12 Months (*Action Item*)
13. Resolution Authorizing the Executive Director to Execute an Exclusive Negotiating Agreement with Treasure Island Community Development, LLC for the Redevelopment of Former Naval Station Treasure Island (*Action Item*)
14. Discussion of Future Agenda Items by Directors (*Discussion Item*)
15. Adjourn

*Relevant documents such as resolutions, staff summaries, leases, subleases are available at the Treasure Island Project Office and the Government Information Center at the Main Library, 100 Larkin Street. Public comment is taken on each item on the agenda.*

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## Notes









DRAFT Minutes of Meeting  
Treasure Island Development Authority  
March 12th, 2003

City Hall, Room 400  
1 Carlton B. Goodlett Place  
San Francisco, CA

1. Call to order 1:38 PM

Roll Call Present: Claudine Cheng (Chair)  
William Fazande (Vice-Chair)  
John Elberling  
Susan Po-Rufino  
Marcia Rosen

Excused: Gerald Green  
Douglas Wong

2. The minutes of the February 12, 2003 TIDA meeting were motioned for approval by Commissioner Rosen, the motion was seconded by Commissioner Po-Rufino  
The minutes were approved unanimously

3. Director's Report given by Executive Director Annemarie Conroy:

**Public Use:** Use of Island for 80 weddings and private parties continues through out the year. Operation Dream holds Easter Egg Hunt on Treasure Island in April

**Environmental cleanup status:** No new issues,

**Short term leases:** No new short term leases besides Department of Aging lease on agenda

**Caltrans/Bay Bridge:** Still working on problems with PG&E and Caltrans in regards to Bay Cable 6 and backup power for Treasure Island

**Community Issues:** Explosion on Treasure Island caused by gas build-up related to stolen stove in housing units, luckily no one injured as it happened very early in the morning

**Citizens' Advisory Board:** CAB Chair Karen Knowles-Pierce present along with CAB subcommittee chairs. Will report to TIDA Board at today's meeting on review of developer's final proposal

**TIHDI Report:** Annual fundraiser upcoming

**Financial report:** Revenues and expenses "right on target"

**Legislation:** No new legislation affecting Treasure Island

Commissioner Elberling joined the Commission at 1:50 p.m.

4. Commissioner Rosen noted that though not stated in the agenda, there were two new communications received by the TIDA Board from Treasure Island Community Development in the previous month  
Commission Secretary Peter Summerville acknowledged this mistake and indicated that Commissioner Rosen was correct

5. Commissioner Cheng noted that it was time to hold election of TIDA Board officers

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Executive Director Conroy stated that in the past nominations from Commissioners had been submitted ahead of time to the Commission Secretary, and suggested this protocol be followed again, if it were to the pleasure of the Commissioners

Deputy City Attorney Michael Cohen stated that these nominations should be submitted at least one week prior to the upcoming TIDA meeting in April

Commissioner Cheng stated that the nominations would be due by April 2<sup>nd</sup>, 2003, and the new elections would be calendared for the April 9<sup>th</sup>, 2003 TIDA Board meeting

6. There was no General Public Comment

7. Ms. Marianne Conarroe, of TIDA staff, presented a 12 month-to-month sublease extension with the City and County of San Francisco Department of Aging. Indicated that after the resolution had been prepared, the Department of Aging requested an 18 month sublease. Stated that if it pleased the Commission this item could be amended to an 18 month sublease

There was no public comment on this item

Commissioner Fazande motioned to amend the item from a 12 month term to an 18 month term

The ammended item was motioned for approval by Commissioner Rosen, the motion was seconded by Commissioner Fazande

The item was approved unanimously

8. Mr. Stephen Proud, of TIDA staff, presented a request to issue a Request for Qualifications for a Fixed Price Contractor for environmental remediation and assistance with early transfer of former Naval Station Treasure Island. Explained that early transfer calls for receiving all property "fence to fence", or all at once. U.S. Navy provides funds for necessary environmental remediation on contaminated land still deemed suitable for early transfer. TIDA and Navy will enter into an environmental services Cooperative Agreement, which spells out all remedial responsibilities the Authority has as well as sets up the funding mechanism to perform this work. Also negotiation decouments with groups such as Department of Toxic Substance Control and Water Quality Control Board which also have jurisdiction over environmental remediation on Treasure Island. Fixed price contractor would help Authority negotiate agreement with U.S. Navy as well as be the contractor to carry out remediation work.

Work related to Request for Qualifications has been completed. Staff requesting Authority to authorize issuance of the Request for Qualifications. Expects the whole process to take 28 weeks to complete. Fiurst phase of work would be to help Authority prepare proposal to U.S. Navy, second phase is negotiation of proposal with the Navy, third phase would be a contract to carry out remediation work on Island

Commissioner Cheng asked if it is customary that the applicants normally write their own proposal and contract to submit to Navy

Mr. Proud stated that this is correct, and selection process also looks at applicants ability to execute this proposal and contract

Commissioner Rosen stated that this Request for Qualifications seems to have aspects of a Request for Proposals in it as well

Mr. Proud stated that this is correct and since the contractor would be compensated during it's first phase of work there are components that do mirror a Request for Proposals in the Request for Qualifications. However still judging applicants based mainly on qualifications

Commissioner Rosen asked if Geomatrix is specifically prohibited from bidding on this project since they are consulting on selection of the Fixed Price Contractor

Mr. Proud stated that this is correct

There was no public comment on this item

The item was motioned for approval by Commissioner Rosen, the motion was seconded by Commissioner Fazande

The item was approved unanimously

Commissioner Rosen commended TIDA staff and the consultants for putting together a well written and thorough Request for Qualifications

9. Mr. Stephen Proud of TIDA staff presented the TIDA staff summary of the revised response to the Request for Proposal submitted by Treasure Island Community Development (TICD). The primary group of consultants who reviewed the documents included Economic and Planning Systems, Roma Design, THDI's consultant Community Economics and San Francisco Public Utilities Commission. Staff summary to response grouped into three main categories: project feasibility and timing, land use plan and urban design, and economic development and financial impacts to the City of San Francisco.

Project feasibility and timing: Mr. Proud stated there were some issues related to availability of working capital from TICD to cover operating costs and capital expenditures, but staff feels that TICD does have the capacity to do that work, and the equity contribution TICD is prepared to make is sufficient. Market assumptions underlying the pro forma appear reasonable, including expected returns. However there is a substantive negotiation that still needs to occur with regards to pro forma submitted. Until a land use program is "nailed down" it is difficult to do a detailed pro forma analysis at a proposal level. Once this occurs the pro forma will be stripped down and rebuilt. Stated that at the proposal level, though, the pro forma seems reasonable. Also noted that there is a provision in the RFP that talked about adequacy of proposed financial assurances. TICD was specifically instructed that it could satisfy this requirement by affirmatively indicating that in it's final proposal Lennar would guarantee certain obligations of TICD. Stated there are a couple of issues with regards to regulatory feasibility, including Tidelands Trust-exchange concept. Draft proposal reviewed by State Lands Commission and TICD "took to heart" several recommendations of State Lands Commission that hopefully will make negotiations with State Lands Commission more feasible in terms of proposed Trust exchange. Lot of work necessary to look at technical feasibility of plan, including various infrastructure and utility systems. Proposal calls for total replacement of utility systems. Still significant questions regarding utility systems including treatment of wastewater on Island, PUC has indicated they would like to see additional analysis as to the storm water treatment wetlands area. One positive aspect of proposal is the geotechnical work that has been done. Proposal calls for reinforcement of perimeter of Treasure Island all in first phase of redevelopment. Stated this is a major upgrade over reuse plan, which calls for a phased approach in this area. This will improve public safety on the Island early on. TI/YBU Citizen's Advisory Board has expressed concern that a peer review be done of the geotechnical proposal, since TICD used same consultants as TIDA did for review of proposal, and staff thinks this is an appropriate request and will recommend during ENA process that this peer review take place

Commissioner Cheng asked if any other City agencies had any feedback on the proposal  
Mr. Proud stated that only they Public Utilities Commission had a response to the proposal

Land Use Plan and Urban Design: Mr. Proud stated that the proposal meets all the criteria of mixed use, preservation of historic structures, and other land use criteria. Affordable housing criteria warrants some discussion. Proposal includes a stipulation for 33 % of the housing, or approximately 927 units, to be affordable. The topic of affordable housing financing is extremely complex and the ability to produce all 927 units as a package needs to be examined some more. Development team has shown a willingness to meet and work with THDI on a regular basis. Staff believes that recreation and open space program is one of the strongest parts of the overall proposal. This program includes many positive elements including many parts of the reuse plan, including shoreline promenade, shoreline parks, an extensive wetlands program and opportunities for sailboarding and sailing programs. Many ball fields and tennis courts proposed, along with Yerba Buena Island open spaces and parks. One tough aspect of proposal is parking and ways to address this issues include shared parking arrangements for the housing component along with better urban design for the proposal as a whole

Commissioner Rosen asked for clarification to the pro forma revision received from TICD

Mr. Proud stated that the staff comments are in response to revised proposal. TICD has not issued a response to the staff summary currently being presented. Commissioner Rosen stated that the inclusion of a share of the infrastructure costs as an affordable housing cost isn't necessary. Would be preferable to have this structured another way as to not have it looked at as a burden. Commenting on this because it wasn't addressed from the comments made earlier.

Economic Development and Financial Impacts on the City: Mr. Proud stated there are two components to be focused on. The first is programming of revenue derived from the project. This will be a part of in-depth pro forma analysis that needs to be done. Returns shown can vary widely. TIDA plans to force TICD to maximize community benefits provided and also ensure that returns to TICD are reasonable market rate returns for the project. Actual fiscal impact to City includes study of public revenue versus public costs analysis. Likely fiscal impacts will affect success of project in front of both TIDA Board and Board of Supervisors. Staff has recognized that a financial structure that provides a "25% return with a fifty-fifty split on the back end" is too simplistic, and TICD has recognized that as well. Still some various pieces of transaction structure that need to be negotiated. Stated that overall it is staff's opinion that proposal set forward by TICD meets the criteria set forth in the RFP, and warrants moving into an exclusive negotiating agreement, which would be subject to TIDA Board approval at the April 2003 meeting. Simplistically speaking, the ENA states that TIDA agrees to negotiate with TICD and no one else for the future redevelopment of Treasure Island. The ENA sets forth conditions that need to be satisfied before moving forward with actual transaction documents and land use designs. Also recognizes there are still various issues regarding the proposal as a whole that need to be negotiated before any transaction goes forward.

10. Ms. Karen Knowles-Pierce, Chair of the Treasure Island/Yerba Buena Island Citizen's Advisory Board (CAB) presented the CAB's review of TICD's proposal. CAB subcommittees met six times to review revised proposal. In many cases they felt TICD had addressed their concerns and in many cases they felt ongoing discussions were warranted on certain issues. These comments were presented to the CAB as a whole and voted on, and these comments were what are presented to the TIDA Board.

Commissioner Elberling asked if the CAB took a position on whether to enter negotiations with TICD. Ms. Knowles-Pierce stated the CAB has not taken an official position, but there are varying opinions within the members of the CAB.

Commissioner Rosen asked Ms. Knowles-Pierce to thank the CAB for their hard work and substantial amount of value that they have added to the process. The amount of work and thought the CAB has put into the process is very obvious and helpful. CAB's approach seems to be very comprehensive and thoughtful. Also commended the developer for engaging the CAB in good faith in discussions with the CAB.

Commissioner Cheng stated that the entire Commission shares Commissioner Rosen's comments towards the CAB.

#### Public Comment:

Ms. Carissa Harris-Adamsun of the Treasure Island Sailing Center stated that their goal is that the development plan adequately plans for the growth of the T.I. Sailing Center. Stated that they are pleased with their discussions with TICD and Mr. Jay Wallace so far. T.I.S.C. is supportive of the proposal and appreciates TICD's support of T.I.S.C.

Ms. Sherry Williams, Executive Director of Treasure Island Homeless Development Initiative, spoke regarding TICD's proposal. Stated that the affordable housing component is very complex. Revisions have happened regarding providing money for TIHDI replacement units. Feels TICD has done all they can in good faith during this part of the process. TIHDI supports moving forward with TICD's proposal based on their dealings with TIHDI so far.

Mr. Kevin Knutsen, of Community Economics, spoke regarding potential of use of 4 % credits and tax exempt bonds for inclusionary units. Wanted to encourage TICD to look into ways to use these mechanisms for inclusionary rental units.

Commissioner Rosen stated that generally inclusionary obligation is the developers obligation, when tax exempt bond authority is in short supply, to meet from proceeds of the market rate housing, and developers shouldn't compete with all affordable housing developers who rely on that 4% credit and tax exempt credit. Stated she would hesitate to rely any public resources for the inclusionary obligation because the future of public finance mechanisms looks unsure.

Commissioner Elberling asked if there is still TIHDI housing proposed on Yerba Buena Island. Also asked if TIHDI is happy with this final situation

Mr. Proud stated that two years ago or so TIHDI and John Stewart Company performed a swap of current housing units that made all TIHDI housing located on Treasure Island. Because of this the TIHDI replacement housing is assumed to stay on Treasure Island

Ms. Williams stated there is still a discrepancy regarding the total number of replacement units. As for location, stated it was originally their impression that Yerba Buena Island was not going to be used for housing. However, there is merit to having all TIHDI housing on Treasure Island as to be close to support services and to create a community. Still haven't totally defined location of units as part of final development plan

Commissioner Rosen offered her informal assistance on issues which would affect public policy and wouldn't be in the developers or consultants realm

Commissioner Elberling asked what type of housing will be developed by TICD and will it be geared toward family housing

Mr. Proud stated that these decisions will be established during the negotiations. Housing types will affect density and public policy. Also vertical development has not yet been discussed, and this area will leave room in negotiations to follow this dialogue all the way through. Overall, housing types "bleeds over" into various other community and land use issues

Commissioner Elberling stated that what groups will have preference for the housing is a policy matter and shouldn't be decided in negotiations or by financial policy. The one exception is that people who work on the Island should have preference. All other decisions should be a policy decision, based on a solid analysis. A related matter is the rights of people currently living on the Island to continue living there during and after redevelopment. Stated this is not an issue for TICD to decide, but for the TIDA Board as well as the Board of Supervisors

Mr. Proud stated that staff has been clear in direction that people who work on the Island should have preference in housing. Have looked at a phasing perspective for moving current residents into new units. CAB has discussed keeping current preferences established in agreement with John Stewart Company.

Mr. Michael Cohen, Deputy City Attorney, stated that TIDA Board would be consulted for feedback and guidance on these issues. Term sheets will be produced for approval regarding housing plan structure. Separate term sheets could be considered regarding transfer of units and housing preferences, which would then be incorporated into the main term sheet

11. Commissioner Elberling motioned for approval of drafting an Exclusive Negotiating Agreement, Commissioner Rosen seconded the motion  
The item was approved unanimously

12. Commissioner Cheng stated that the election of new TIDA Board officers will happen at the April 9, 2003 meeting and nominations are due to the Commission Secretary by April 2<sup>nd</sup>.

Director Conroy introduced and welcomed Jack Sylvan who is the new Director of Development for the Treasure Island Development Authority. Stated he is very talented and TIDA is very happy to have him on the staff.

13. The meeting was adjourned at 3:06 p.m.



## Notes

**Notes**



# THE SOUL OF AMERICA PROJECT

March 24, 2003

Claudine Cheng  
City of San Francisco, TIDA  
410 Avenue of Palms, Treasure Island  
San Francisco, CA 94130

Dear Claudine,

I'm writing to let you know about an important change that is soon to occur within The Soul of America Project. I will be leaving my position as Executive Director on March 31<sup>st</sup> and will be replaced by Jeannette Redensek on an interim basis while a national search is conducted for a new Executive Director.

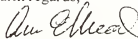
I leave feeling satisfied with my role in launching The Soul of America Project and bringing it to its present level of development. I've worked hard to create our organizational infrastructure, to plan, manage and ensure the quality of our programs, and to make a strong case to the city government of San Francisco for establishing a stunning site on Treasure Island for a major work of public art. The Project is now well prepared to begin the next phase.

The next major challenge, of course, is to attract the significant level of private, corporate and institutional funding necessary to realize a project of this size and ambition. Jeannette Redensek is well equipped to address this challenge. She comes to us from The Oram Group, a nationally known fundraising organization and a long-standing member of our planning team. Jeannette has an expertise in the history of architecture and planning and a wide network of contacts in the local and national art world. Please welcome her.

As I leave, it is with continuing devotion to The Soul of America Project and with a heartfelt wish for its success in creating a momentous public art work in San Francisco. I'm grateful to Don Propstra for having given me the opportunity to manage such a deeply meaningful endeavor, and to all those who have helped me. I'm inspired by the brilliant, serious, interesting, and wonderful people I've met during my involvement with this Project. As I move on to new challenges, I hope to maintain our very enjoyable relationship – please don't hesitate to call or write. Before March 31, 2003, you may reach me at the number below; thereafter please contact me at (415) 674-9722 or annmead@pacbell.net.

Thank you again for your support of The Soul of America Project and for the pleasure of your acquaintance.

Warm regards,



Ann E. Mead  
Executive Director



# TIHDI

Treasure Island Homeless Development Initiative

March 11, 2003

Claudine Cheng, President  
Treasure Island Development Authority  
410 Palm Ave., Bldg. 1  
San Francisco, CA 94130

Dear Ms. Cheng,

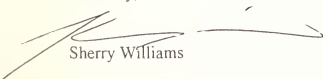
The Treasure Island Homeless Development Initiative (TIHDI) has been reviewing the Treasure Island Community Development (TICD) proposal since its publication in July 2002. We have hosted meetings with all of our members, distributed copies of the proposal and have had small group discussions. As you know, we submitted some initial comments to the TIDA after this first review of the document.

With regard to the housing section, TIHDI has met with TICD a number of times to go over this section in detail. Their first proposal showed no financing to replace TIHDI's existing units. After a few meetings with them and the public hearings regarding the housing section, TICD went back and revised their pro forma, indicating revenue streams for all the affordable housing sections. TIHDI met with TICD and their consultant Bay Area Economics (BAE) to clarify some of the financing assumptions that had been made in this revised pro forma. BAE revised the pro forma again based on this feedback. TIHDI hired a consultant from Community Economics to review these revised numbers and we had a meeting with BAE and TICD to discuss them. TIHDI's remaining responses and concerns are attached to this letter.

It is our understanding that the resolution of these remaining issues would be a condition to the successful completion of the Exclusive Negotiating Agreement, "ENA." Based on this understanding, we would support moving the process forward. The Employment section of TICD's proposal also needs some revising and we have attached our comments regarding this as well.

Thank you and your fellow Commissioners for the consideration of our response.

Sincerely,



Sherry Williams

Cc: TIDA Commissioners Fazande, Po-Ruffino, Elberling, Wong, Greene & Rosen  
Annemarie Conroy, TIDA Executive Director

# UNIT

[The following text is extremely faint and illegible due to the quality of the scan. It appears to be a list or table of contents with multiple columns and rows of text.]

### **TIHDI Response to TICD Proposed Affordable Housing Financing**

Overall, TICD has been responsive to input made by TIHDI and has adjusted its numbers and income sources according to the feedback it has received. However, in its current form, the Affordable Housing Financing has an over reliance on 9% Tax Credit and Section 8 financing, calculation disparities for the Project Section 8 contribution and discrepancies with regard to the developer contribution. TIHDI would expect the following issues to be addressed and resolved as a condition of the final "ENA."

### **Replacement of TIHDI units**

It is expected that TICD will ensure that TIHDI's units are replaced with new units and that the phasing of these units would not result in any displacement of existing residents. The minimum number of units to be replaced is 222 and the maximum is 375.

### **TIHDI Transitional Housing Units**

Recognizing that capital financing options for transitional housing programs is very limited, prior to the execution of a DDA, TICD should demonstrate how it would fund the replacement of these units. TICD should assume that the units will support no debt and no tax credit equity.

### **TIHDI Permanent Family Units**

As discussed with TICD, the current pro forma overly relies on Section 8 and 9% low income housing tax credits. Two TIHDI agencies do not have the organizational structure to participate in the tax credit program, and the competition for tax credits makes it unlikely that all of the replacement units would receive allocations of 9% tax credits. The Section 8 funds are conditioned upon annual renewals of appropriations from HUD and therefore would require a City guarantee to support conventional debt service. Given these limitations, a revised pro forma indicating a reduced reliance on these sources of income should be presented prior to execution of a DDA.

### **Agency Rental**

TICD should investigate utilizing tax-exempt private activity bonds with 4% tax credits for the Agency units. While, under current rules, 30% of the units would need to be affordable to households earning no more than 50% of the area median income, this loss in revenue will be more than offset by reduced cost of debt and equity from the 4% credits.

### **Resolve the \$13 million discrepancy**

As discussed with TICD and its consultants, the assumptions for calculating supportable debt for the TIHDI replacement family units is not viable, given the tenant populations to

be served. TIHDI estimates the units could support no more than \$7,510,500, rather than the \$14,332,050 indicated on the pro forma by TICD. This discrepancy, along with the approximately \$6 million discrepancy between the developer contribution on the Affordable Housing Pro Forma Summary and the 20 Cash Flow Pro Forma, should be rectified prior to executing a DDA.

### TIHDI Response to TICD Employment & Economic Development Proposal

TIHDI appreciates the spirit of inclusion in this section of the proposal but would expect that the ENA would require the proposal to be more precise in a few points.

Specifically, with regard to construction employment, the use of TIHDI's Job Broker system needs to be identified in making use of union labor and an "aggressive apprenticeship program" in order to comply with the construction employment goals of the TIHDI Agreement.

Also, as the First Source entity for Treasure Island, when referring to meeting the First Source Hiring goals, it should include in collaboration with the TIHDI Job Broker System.

Lastly, the last paragraph of the TICD proposal regarding HRC employment goals and subcontractor participation needs to be rewritten to reflect accurate HRC employment and MBE/WBE subcontracting goals and requirements, as currently written the two are confused.





# THE SOUL OF AMERICA PROJECT

March 11, 2003

Treasure Island Development Authority Board  
Treasure Island Project Office  
410 Palm Avenue, Building 1  
San Francisco, CA 94130

Dear Chairperson Cheng and TIDA Commission Members,

Thank you, Ms. Cheng, for inviting me to write this letter to the Treasure Island Development Authority expressing the views of The Soul of America Project. As you know, The Soul of America Project is a non-profit organization with the vision of creating a very significant work of monumental public art celebrating the guiding values of our American democracy. We hope to create this work of art, which may include related architecture, on Treasure Island, where it would stand as a welcoming gateway to the Western United States, a cultural anchor for Treasure Island and a powerfully attractive destination for visitors from this country and abroad.

The artwork and any related architecture will be designed by a future international competition, so no specific design is proposed at this time. However, to give you a sense of the potential drama and sophistication of the work we envision, I've enclosed a photograph of a recently completed Cultural Center in New Caledonia, designed by Pritzker Prize winner Renzo Piano. (Coincidentally, it was Renzo Piano who designed the upcoming renovation and expansion of the California Academy of Sciences in Golden Gate Park.) The photograph is representative of our Project in that the site, a point of land surrounded by water, is similar to Treasure Island and the design is of the originality and strong visual impact we intend.

It is with this exciting vision in mind that members of The Soul of America Project have attended most of the TIDA and CAB meetings over the past two years and have joined in the public discussion of TIDC's Response to the Request for Proposals. It is our view that TIDC has presented a fundamentally reasonable plan for the redevelopment of Treasure Island, and we support their being awarded an Exclusive Negotiating Agreement. We believe this developer can be relied on to conduct further design negotiations in good faith and to respond constructively to the evolving requirements of the City of San Francisco and the public as the process continues.

That being said, we urge the TIDA to request that in the next iteration of the design TIDC make a specific modification that we believe will greatly benefit the City and is of crucial importance to The Soul of America Project. In the initial Response, the proposed Cultural Center was located on the highly visible northwestern tip of the island; in the Revised Response it was moved to an enclosed, far less visible space in the interior. The dramatic setting and sight lines of the northwestern corner are very important to the success of a major work of visual and architectural art such as ours, as you can imagine by looking at the photograph of Renzo Piano's Cultural Center. Assuming our proposed monumental work would be located at the site of a Treasure Island Cultural Center, we ask the TIDA to require that TIDC either move the Cultural Center



March 11, 2003

back to its initial location or, at least, to designate the northwestern area of the island as the primary site for large scale public art and architecture.

Thank you and the Commission very much, Ms. Cheng, for your consideration. Thank you, too, for conducting this redevelopment process with such a great degree of public involvement, which itself exemplifies the democratic values we mean to celebrate. We appreciate the opportunity to be a part of the ongoing conversation, and to share our vision that Treasure Island can become – once again – the site of breathtaking public art and architecture.

Sincerely,

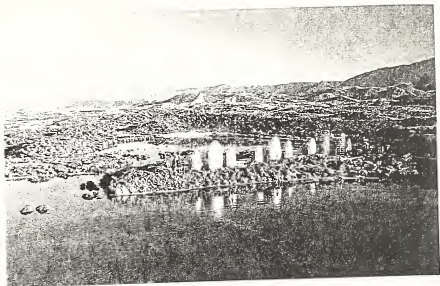


Ann E. Mead  
Executive Director

Enclosure:      Photograph of Cultural Center in New Caledonia, designed by Renzo Piano  
                         (Enclosure not included in electronic copy of letter)

CC:                Jay Wallace, Treasure Island Community Development  
                         Annemarie Conroy, Executive Director, Treasure Island Project  
                         Stephen A. Proud, Director of Development, Treasure Island Project

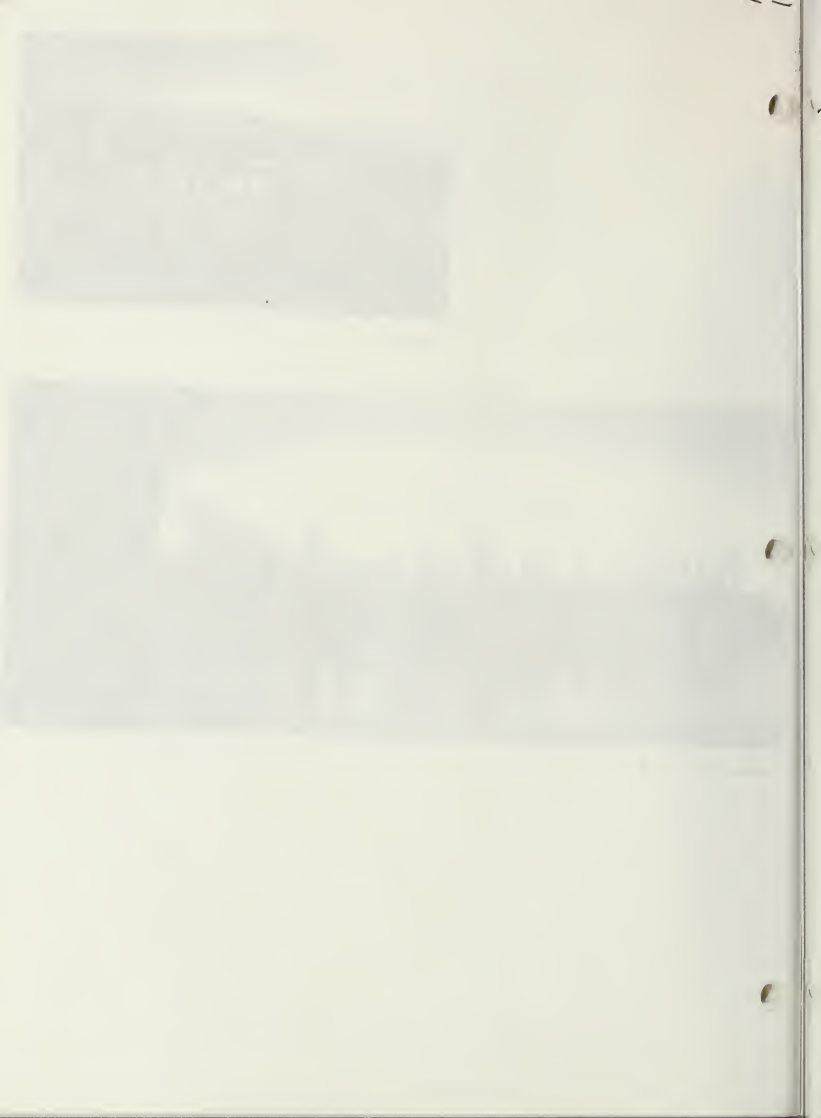




Aerial view



View across the bay





## **SAN FRANCISCO BOARDSAILING ASSOCIATION**

1592 UNION STREET, BOX 301 • SAN FRANCISCO, CALIFORNIA 94123

Stephen Proud, Director of Development  
Treasure Island Development Authority  
410 Avenue of Palms, Building 1, Treasure Island  
San Francisco, CA 94130

March 26, 2003

Claudine Cheng, Chair  
Treasure Island Development Authority  
410 Avenue of Palms, Building 1, Treasure Island  
San Francisco, CA 94130

Karen Knowles Pearce, Chair  
The Treasure Island/Yerba Buena Island Citizens Advisory Board  
410 Avenue of Palms, Building 1, Treasure Island  
San Francisco, CA 94130

Re. Treasure Island Development & Shoreline Access  
Phased Development of Boardsailing Access Areas

Dear Sir/Madam,

I am writing on behalf of the members of the San Francisco Boardsailing Association. The SFBA is a 1,600-member non-profit organization that promotes public access and safety for the windsurfing and boardsailing community.

I understand that the Treasure Island Development Authority (TIDA) has determined that the revised proposal by Treasure Island Community Development (TICD) meets the RFP requirements set out by the TIDA and that the City will enter into formal negotiations with TICD.

I have reviewed the revised Response to the Request for Proposals submitted by Treasure Island Community Development. As I stated in a previous letter, the two boardsailor launching areas identified in the Response are well situated to serve our community and would provide improved access to the waters of the Bay. The inclusion of two boardsailing areas creates the opportunity to phase construction so that one area or the other is accessible and usable at any given time in order to minimize construction impacts on access. This is critical since the overall redevelopment of the island will take a number of years and access to the water could be lost for a significant period of time if the new access is not made usable before the existing access is temporarily closed to the public during construction and redevelopment.

Ideally, the new access area would be improved before the existing access area might be closed. This may be problematic since early construction activities such as reinforcing of the island perimeter may impact access during the very early stages of the redevelopment. It is not critical that the new access area be entirely finished as long as reasonable access is provided to the west of the existing launch area once access to the existing launch area is restricted.

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## SAN FRANCISCO BOARDSAILING ASSOCIATION

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A temporary parking and rigging area could be established in the area of Mason Court or Bayside Drive to provide alternate access. There are significant grassy areas already existing around these residential units that would provide areas to rig equipment. The most significant improvement required would be the installation of concrete ramps that would allow boardsailors to safely get into and out of the Bay. The shoreline in this is currently armored with large uneven boulders that are very difficult to climb over while carrying equipment. Access ramps will ultimately need to be constructed in any event, so it may make sense to include these ramps in the early stages on construction. The National Park Service created a similar alternate access area when they were redeveloping the East Beach area of Crissy Field in the Presidio

Treasure Island has been growing in popularity and importance as a boardsailing spot over the years. Boardsailors have learned that there are many days when the wind conditions at Treasure Island are ideal even though the wind at most other sites is too light for most boardsailors. If access is lost even temporarily at Treasure Island, it could be the difference between boardsailors being able to get onto the bay or not on some days. Recent revisions to the Bay Plan recognize that the north end of Treasure Island is a critical access point for boardsailing. While the San Francisco Bay now has over 200 miles of accessible shoreline, there are only a dozen sites along those shores where facilities and site conditions allow for the kind of superior access that can frequently attract large numbers of windsurfers (20 or more).

Please feel free to contact me with any questions or for any clarification.

Sincerely,

Peter Thorne

President, San Francisco Boardsailing Association

phone: (415) 454-3522 x 104

e-mail: [thorne@sfba.org](mailto:thorne@sfba.org)

Please send written responses to :

Peter Thorne  
143 Third Street  
San Rafael, CA 94901

Cc: Jay Wallace, Treasure Island Community Development  
Mary Ann Conarroe, TIDA  
Gerald Green, San Francisco Planning Department  
Joe LaClair, Bay Conservation & Development Commission  
Ruth Gravanis, Treasure Island Wetlands Project  
Save The Bay

# THE HISTORY OF THE CITY OF BOSTON

The first settlement of the city of Boston was made in 1630, when a group of Puritan settlers, led by John Winthrop, arrived on the ship *Arcturion*. They established a colony on the eastern shore of the harbor, which was named *Boston* in honor of the Earl of Boston, a friend of the settlers. The colony grew rapidly, and by 1639 it had a population of about 1,000 people. In 1639, the settlers adopted a set of laws known as the *Charter of the City of Boston*, which gave them a degree of self-government. The city continued to grow, and in 1688 it was granted a royal charter, which gave it the status of a city.

The city of Boston was the center of the American Revolution. It was here that the first shots of the war were fired, in 1775. The British evacuated the city in 1776, and the Continental Congress moved to Lancaster and then to York. The city was occupied by the British from 1774 to 1780, during which time it was known as *Military Boston*. After the war, the city continued to grow, and by 1800 it had a population of about 10,000 people.

The city of Boston was the center of the abolitionist movement in the United States. It was here that the first anti-slavery societies were founded, and it was here that the first anti-slavery laws were passed. The city was also the center of the women's rights movement, and it was here that the first women's rights convention was held, in 1840.

The city of Boston was the center of the industrial revolution in the United States. It was here that the first textile mills were built, and it was here that the first factory system was developed. The city was also the center of the railroad movement, and it was here that the first railroad was built, in 1826.

The city of Boston was the center of the civil rights movement in the United States. It was here that the first civil rights organizations were founded, and it was here that the first civil rights laws were passed. The city was also the center of the anti-apartheid movement, and it was here that the first anti-apartheid laws were passed.



Notes



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**AGENDA ITEM**  
**TREASURE ISLAND DEVELOPMENT AUTHORITY**  
**City and County of San Francisco**

**Agenda Item No. 8**

**Meeting of April 8, 2003**

**Subject:** Request for Approval of Contract with Toolworks, Inc. for janitorial and building maintenance services for the period March 2003 through February 2004 for an amount not to exceed \$125,000.

**Contact/Phone:** Annemarie Conroy, Executive Director  
Eila Arbuckle, Finance Manager  
274-0660

**SUMMARY OF PROPOSED ACTION**

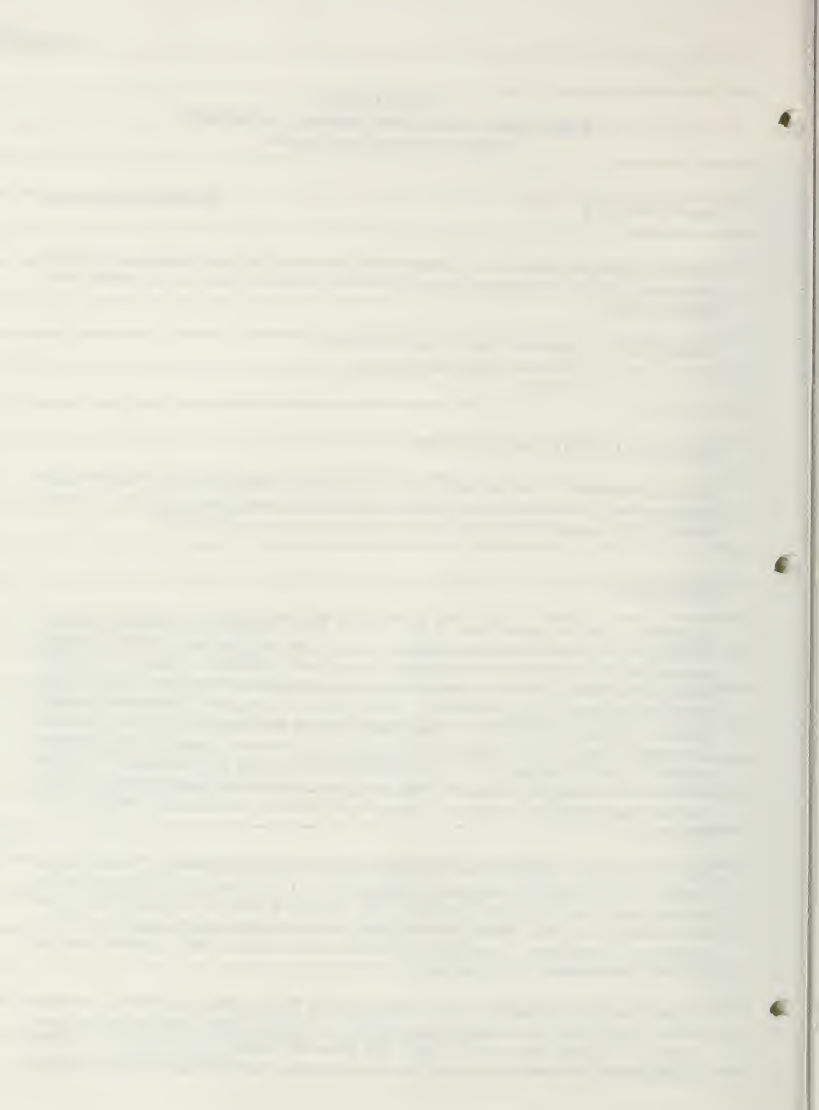
Authorize execution of a contract with Toolworks, a member organization of the Treasure Island Homeless Development Initiative, for janitorial and building maintenance services for the period March 1, 2003 through February 28, 2004 for an amount not to exceed \$125,000

**DISCUSSION**

Toolworks, a member organization of the Treasure Island Homeless Development Initiative (TIHDI), is a non-profit agency organized to provide services that increase economic opportunities for economically-disadvantaged people with disabilities. Most of Toolworks' clients are homeless. Clients are recruited through the TIHDI Job Broker Program and through the Homeless Employment Collaborative. One of Toolwork's programs is contractual janitorial services. Janitorial and other building maintenance services are identified in the draft Homeless Component of the Treasure Island Reuse Plan as one of the economic development opportunities available to assist homeless and other economically disadvantaged San Franciscans. The Board of Supervisors has authorized the Authority to engage in sole source negotiations with TIHDI member organizations for contracts for economic development opportunities identified in the Reuse Plan.

Over the past year, Toolworks has developed a specific training program for Treasure Island. Toolworks has one fulltime supervisor dedicated to TI. This person trains and supervises the work of four trainees who work five hours a day, five days a week for 10 weeks. The trainees are then helped to find fulltime janitorial jobs. Toolworks gives priority placement in this program to TI residents. In addition, Toolworks commits trained staff to provide janitorial services to event venues on the weekends.

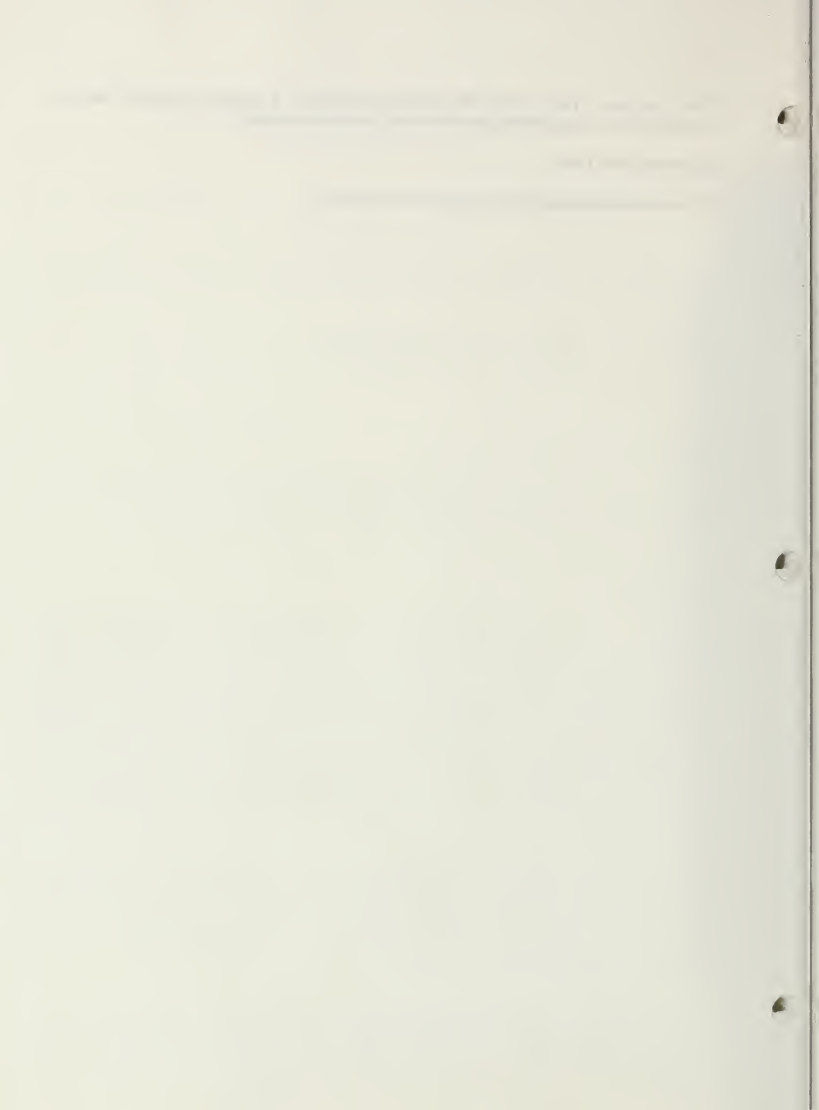
Janitorial services are required for the Treasure Island Project offices and the special event venues. Since the event venues often are booked for both Saturdays and Sundays, janitorial services are needed seven days a week. The proposed contract with Toolworks provides janitorial services seven days a week for an amount not to exceed \$7,290.00 per month or



\$87,480 per year. The contract also provides for \$37,520 in additional janitorial services, including (subject to negotiation) assistance with special event support.

#### **RECOMMENDATION**

Staff recommends approval of the contract with Toolworks.



1 **AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A CONTRACT WITH**  
2 **TOOLWORKS, INC. TO PROVIDE JANITORIAL AND BUILDING MAINTENANCE**  
3 **SERVICES FOR THE PERIOD MARCH 1, 2003 THROUGH FEBRUARY 29, 2004 FOR AN**  
4 **AMOUNT NOT TO EXCEED \$125,000.**

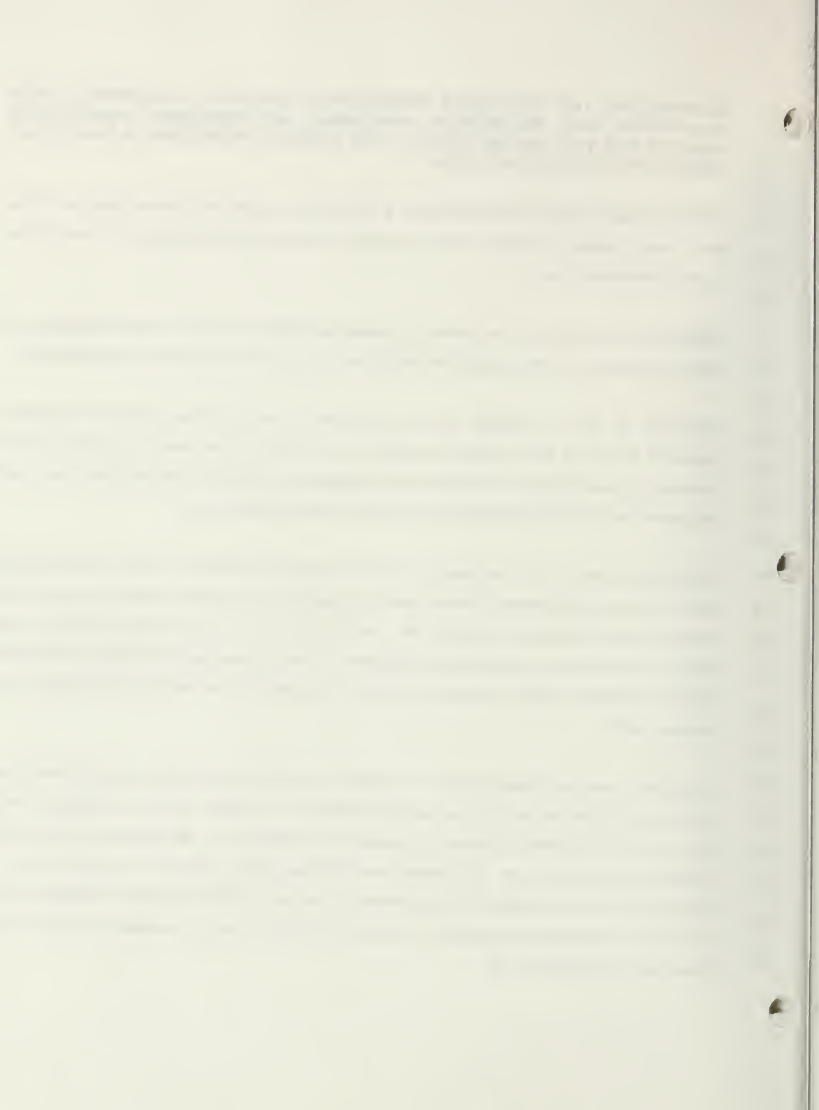
5 WHEREAS, Naval Station Treasure Island is a military base located on Treasure Island and Yerba  
6 Buena Island (together, the "Base"), which is currently owned by the United States of America ("the  
7 Federal Government"); and,

8 WHEREAS, Treasure Island was selected for closure and disposition by the Base Realignment and  
9 Closure Commission in 1993, acting under Public Law 101-510, and its subsequent amendments; and,

10 WHEREAS, In 1995, the General Services Administration and the Bureau of Land Management  
11 determined that Yerba Buena Island was surplus to the Federal Government's needs and could be  
12 transferred to the administrative jurisdiction of the Department of Defense under the Base Closure and  
13 Realignment Act of 1990 and disposed of together with Treasure Island; and,

14 WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97, authorizing the  
15 Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the  
16 Treasure Island Development Authority (the "Authority") to act as a single entity focused on the  
17 planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the Base for the public  
18 interest, convenience, welfare and common benefit of the inhabitants of the City and County of San  
19 Francisco; and,

20 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of  
21 the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968  
22 (the "Act"), the California Legislature (I) designated the Authority as a redevelopment agency under  
23 California redevelopment law with authority over the Base upon approval of the City's Board of  
24 Supervisors, and (ii) with respect to those portions of the Base which are subject to Tidelands Trust,  
25 vested in the Authority the Authority to administer the public trust for commerce, navigation and  
fisheries as to such property; and





1 WHEREAS, The Board of Supervisors approved the designation of the Authority as a redevelopment  
2 agency for Treasure Island in 1997; and,

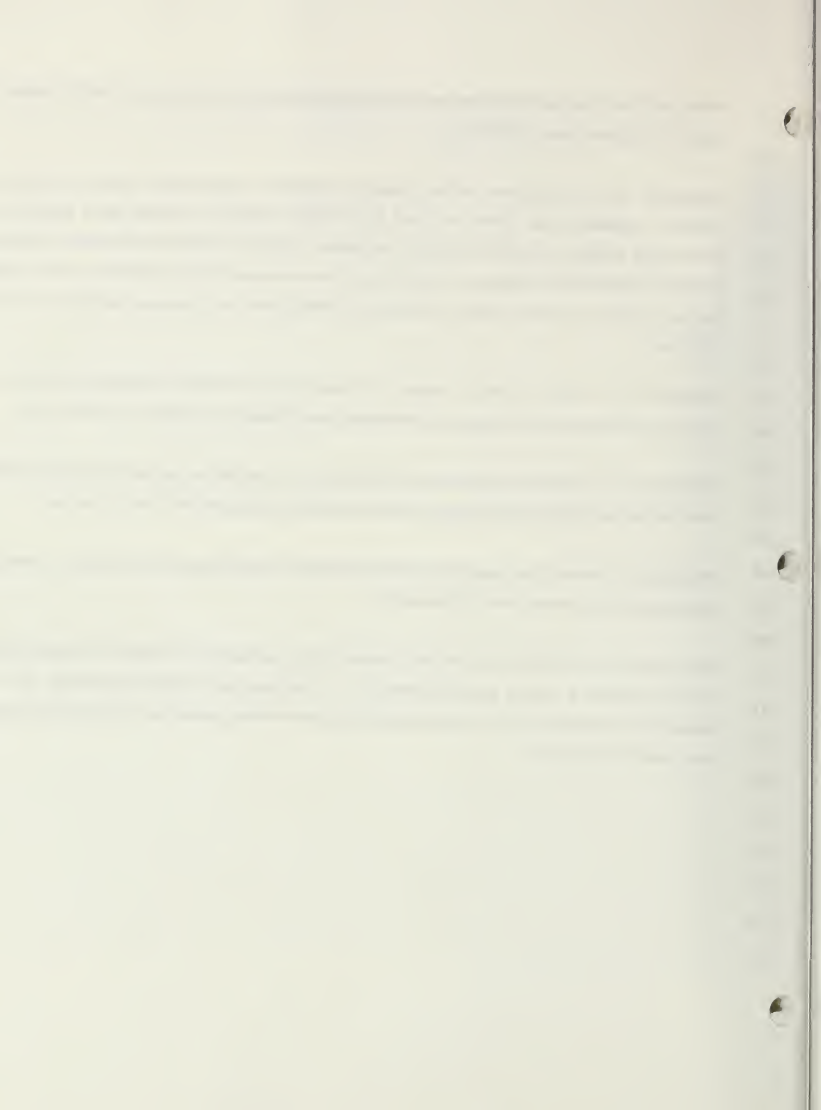
3 WHEREAS, the City and County of San Francisco negotiated a proposed Base Closure Homeless  
4 Assistance Agreement and Option to Lease Real Property with the Treasure Island Homeless  
5 Development Initiative, a California nonprofit corporation organized to utilize the resources of former  
6 naval base Treasure Island available to help fill gaps in the continuum of care for homeless persons and  
7 families, pursuant to the Base Closure Community Redevelopment and Homeless Assistance Act of  
8 1994; and,

9 WHEREAS, the Authority wishes to support the Treasure Island Homeless Development Initiative  
10 pursuant to the Base Closure Community Redevelopment and Homeless Assistance Act of 1994; and

11 WHEREAS, the Contractor represents and warrants that it is qualified to perform the janitorial and  
12 other building maintenance services required by the Authority as set forth under this Contract; and

13  
14 WHEREAS, the Authority has negotiated with the Contractor to reach agreement on the scope of work,  
15 and budget for the services shown in Appendix A;

16  
17 Now, therefore be it RESOLVED, That the Authority hereby authorizes the Executive Director of the  
18 Project to execute a contract with Toolworks, Inc., a California public benefit corporation, for an  
19 amount not to exceed \$125,000 to provide janitorial and other building maintenance services for former  
20 naval base Treasure Island.  
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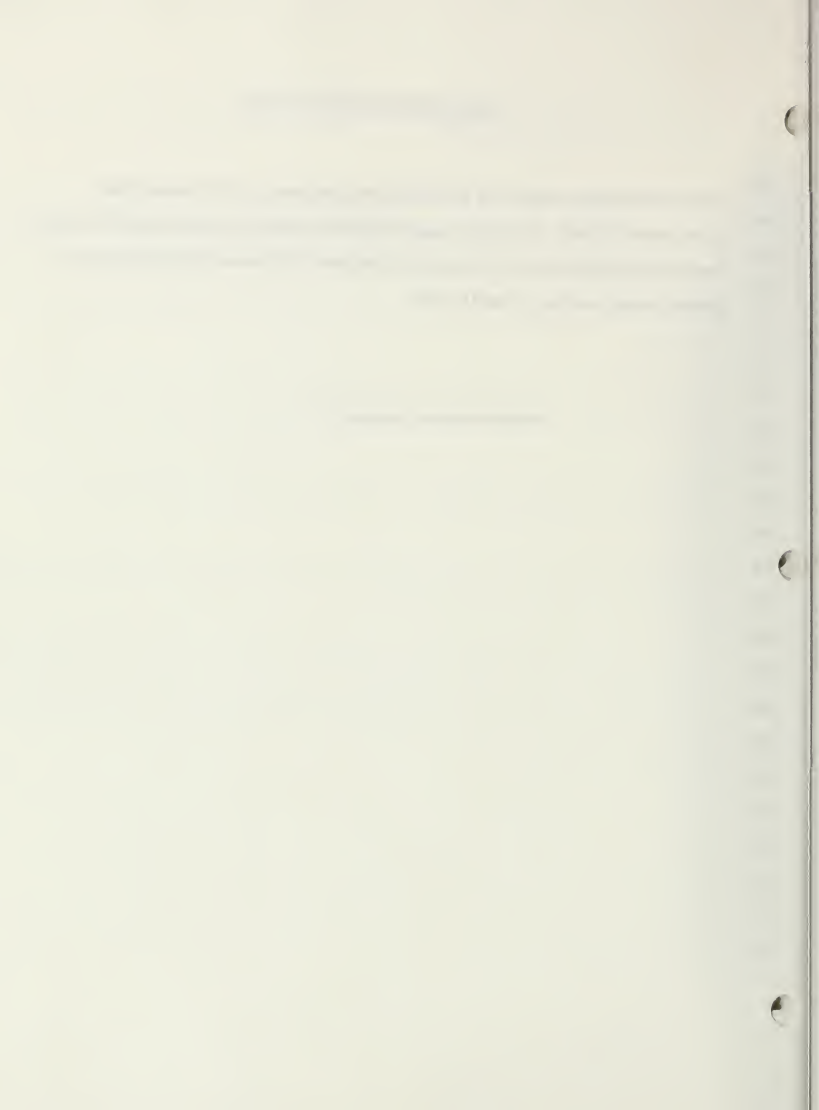


**CERTIFICATE OF SECRETARY**

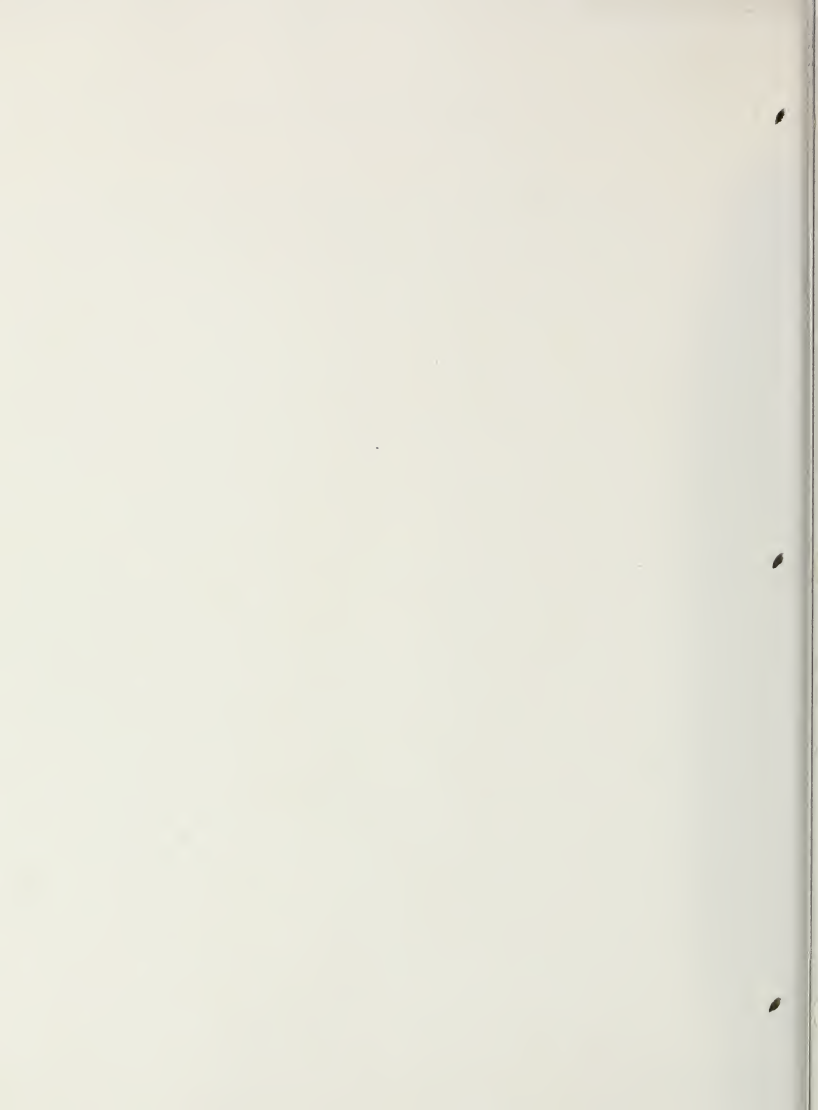
I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at a properly noticed meeting on April 9, 2003.

---

**William Fazande, Secretary**







**City and County of San Francisco**  
**TREASURE ISLAND DEVELOPMENT AUTHORITY**  
**Treasure Island Building 1, 410 Palm Avenue**  
**San Francisco, California 94130**

Scope & Budget of the Agreement between the Treasure Island Development Authority and

**TOOLWORKS, INC.**

**APPENDIX A**  
**SERVICES TO BE PROVIDED BY CONTRACTOR**

Toolworks ("Contractor") shall provide all labor, materials, and equipment necessary to perform janitorial services to buildings on Treasure Island and Yerba Buena Islands as described below. In performing the services provided for in this Appendix, Contractor's liaison with the Treasure Island Development Authority shall be Lori Mazzola, Special Events Coordinator.

For the following Treasure and Yerba Buena Island facilities, Building One, 410 Palm Avenue, Casa de la Vista, Chapel, Fogwatch, Nimitz Conference Center, and the Nimitz House, Contractor shall:

- Furnish all labor and materials for scheduled janitorial services
- Provide all necessary dispensers for soap, towels, toilet paper, seat covers and assure dispenser uniformity among all venues
- Stock all venues with cleaning supplies and appliances, including vacuum cleaners, mops, brooms, brushes
- Provide transportation of all staff among venues

**Services to be performed:**

- Empty all trash and place in outside debris boxes
- Empty all trash and place in outside debris boxes
- Vacuum all rugs
- Sweep all floors
- Mop all floors
- Dry-mop hardwood floors
- Spot clean all rugs and floors
- Dust and clean all furniture, ledges, corners, windowsills, countertops, and all dirt & dust gathering surfaces
- Dust around door and window ledges
- Dust cobwebs
- Clean all accessible windows inside and out
- Clean all mirrors and glass doors

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- Clean all bathrooms, including toilets, urinals, sinks, countertops, windows, ledges, floors, stalls
- Clean all kitchens, including floors, appliances, mirrors, windows, and ledges
- Clean all appliances, inside and out, including ovens, refrigerators, freezers, grills and sinks
- Clean all bar areas including floors, appliances, under any mats, sinks
- Clean all fireplace covers and ledges
- Clean all rooms, including storage rooms, of all facilities
- Wipe off and clean all tabletops, table legs and chairs
- In Chapel, clean pews, dusts & polish podiums and pulpit and shelving area behind altar
- For all facilities clean in and around all doorways (inside and outside), sweep and remove trash for all entries and walkways
- In Casa, clean and sweep patio, empty trash cans and ashtrays, check landscaping for trash and remove
- Refill and replace bathroom and kitchen supplies including hand soap, hand towels, toilet paper, seat covers – all containers must be full at all times
- Keep bathroom and kitchen supply cabinets fully stocked

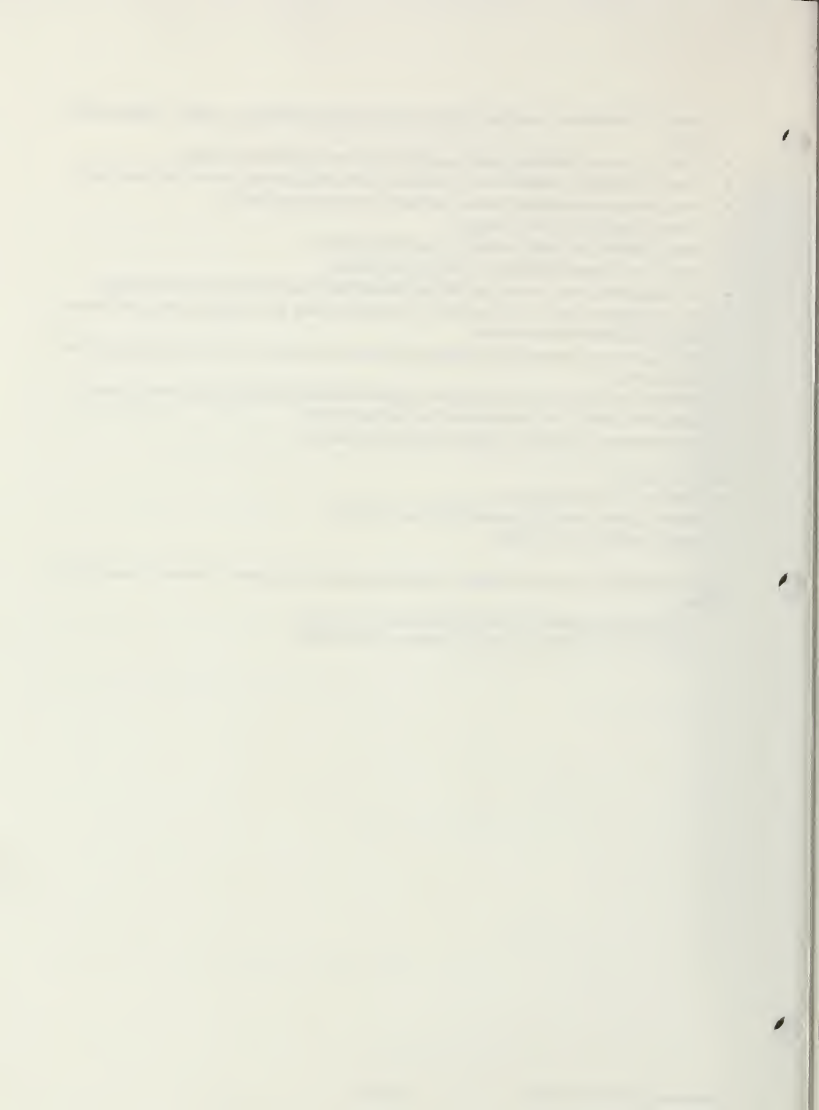
For Building One:

- Monthly: buff resilient floors
- Monthly polish brass railings and other brass fixtures
- Yearly: refinish all hard floors

For any questions, to report damages, or problems, contact the Mayor's Treasure Island Project Office:

Lori Mazzola, Special Events Coordinator, tel: 274-0312

Stephen Proud, Deputy Executive Director, tel:274-0660



## ADDENDUM 1 TO APPENDIX A

### 1. WORKFORCE HIRING GOALS

In performing its rights and responsibilities under this Agreement, Contractor shall comply with the following workforce hiring goals for qualified homeless or otherwise economically disadvantaged persons and San Francisco residents.

**1.1 Contractor's Workforce Hiring Goals.** Contractor shall use Good faith Efforts to meet the work force hiring goals described herein (the "Workforce Goals"). For purposes of this Section 1, Contractor's Good Faith Efforts shall include, but not be limited to, the following:

(a) Submitting detailed written plans describing how Contractor intends to meet the Workforce Goals (a "Hiring Plan").

(b) Listing jobs available on the Premises with the TIHDI Job Broker at least two weeks prior to advertising for applicants elsewhere;

(c) Considering for appropriate job openings all candidates who are qualified, screened and referred to it by the TIHDI Job Broker;

(d) Establishing with TIHDI mutually acceptable means of communicating about job openings and provide information about jobs and about outcomes of referrals within a reasonable time upon request by the TIHDI Job Broker;

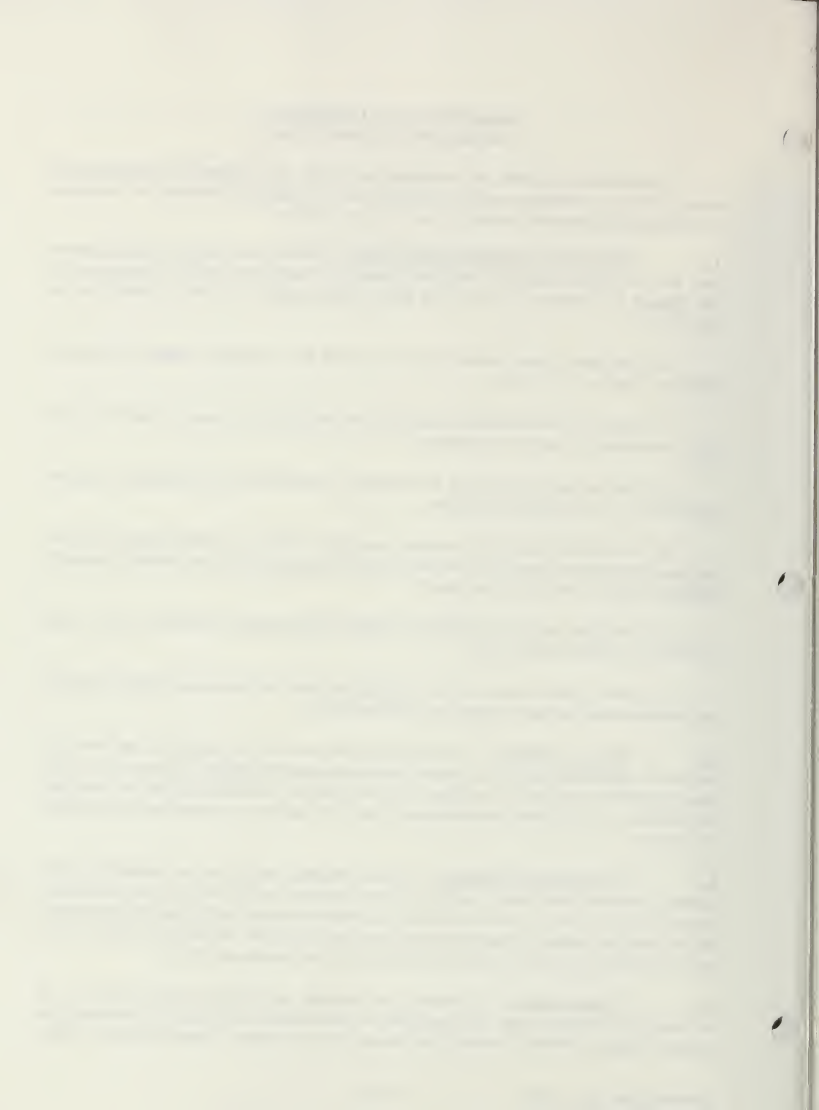
(e) Consulting with the TIHDI Job Broker on an ongoing basis about how to meet Contractor's Workforce Goals; and

(f) Meeting and conferring with the TIHDI Job Broker to discuss and attempt to resolve any problems with Contractor meeting its Workforce Goals.

**1.2 Burden of Proof.** If the Workforce Goals are not met, Contractor shall have the burden of establishing in any Enforcement Procedure described in Section 1.9 below that it made Good Faith Efforts and that the candidates who were selected were better qualified for work than the homeless or economically disadvantages persons who applied or were referred by the TIHDI Job Broker.

**1.3 Construction Workforce.** Without obligation (other than as expressly set forth herein), Contractor shall also be required to give consideration for hiring on all construction projects on the Premises to qualified homeless or otherwise economically disadvantaged persons, and to qualified residents of San Francisco whose annual income, at the time of hire, is at or below fifty percent (50%) of median income for the City as determined by HUD.

**1.4 Subcontracting.** Contractor will consider subcontracting certain tasks to be performed by Contractor under this Agreement to TIHDI member organizations, particularly for grounds keeping, janitorial, recycling and deconstruction activities. Subcontracts with TIHDI



organizations will be included for purposes of determining Contractor's Good Faith Efforts to meet the Work Force Goals.

### **1.5 Hiring Plan.**

(a) Contractor shall submit its Hiring Plan to the Authority within sixty (60) days of the Commencement Date. Contractor's Hiring Plan shall include a detailed description of how Contractor intends to meet its Workforce Goals, which description should include community outreach and recruiting efforts, hiring procedures (e.g., phased hiring), a projected schedule for meeting the Workforce Goals, and alternative courses of action if it appears that the Workforce Goals will not be met.

(b) During the first 30 days after the Hiring Plan is submitted, the Authority and Contractor shall negotiate in good faith solutions to any deficiencies in the Hiring Plan as reasonably determined by the Authority. At the expiration of such 30-day period, the Authority shall advise Contractor, through a written "Notice of Noncompliance," of any alleged deficiency in the Hiring Plan remaining at the close of such negotiations. The Notice of Noncompliance shall state the specific basis for the alleged deficiency(ies) and the Authority's suggested cure. Contractor shall advise the Authority within 10 days of its receipt of the Notice of Noncompliance whether Contractor accepts the suggested cure. If the Contractor rejects the suggested cure, either party may proceed immediately to the Enforcement Procedure pursuant to Section 1.9 below by filing a Request for Enforcement ("Request") on the Hiring Plan. The Request shall specify the issues presented and the relief requested.

**1.6 Reports.** Contractor shall prepare reports regarding the composition of Contractor's work force reasonably satisfactory to the Authority.

**1.7 Matters Subject to Enforcement Procedure.** In addition to the initial preparation of the Hiring Plan, all matters related to implementing the Hiring Plan and the Workforce Goals are subject to the Enforcement Procedure described in Section 1.9 below.

**1.8 Implementation of Enforcement Procedure.** The Enforcement Procedure, as provided for in Section 1.9 below, shall be the exclusive procedure for resolving any dispute concerning the interpretation or implementation of the Hiring Plan or any alleged deficiency in Contractor's Good Faith Efforts to achieve the Workforce Goals. The Enforcement Procedure shall be implemented by the Human Rights Commission of the City of County of San Francisco (the "Commission"), which shall have the powers described below unless otherwise provided by law.

(a) All subcontracts related to the Agreement ("Subcontracts") shall incorporate the provisions of this Section 1 and the Authority shall have the right to enforce said obligations, requirements and agreements against the Contractor or its subcontractors. Contractor shall require, by contract, that each subcontractor participates in Enforcement Procedure proceedings in which it may be identified in a Request, and that each subcontractor shall be bound by the outcome of such Enforcement Procedure according to the decision of the Commission.

### **1.9 Enforcement Procedure.**

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DEPARTMENT OF THE HISTORY OF ARTS  
AND ARCHITECTURE

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(a) If the Authority reasonably determines that Contractor has failed to use Good Faith Efforts to meet the Workforce Goals, or for any other matter subject to this Enforcement Procedure the Authority shall send a written Notice of Noncompliance to Contractor describing the basis for its determination and suggesting a means to cure any deficiencies. If Contractor does not, in the reasonable discretion of the Authority, cure the deficiency within ten (10) days, the matter shall be submitted to the following Enforcement Procedure.

(i) Prior to the filing and service of a Request, the parties to any dispute shall meet and confer in an attempt to resolve the dispute.

(ii) The Authority, Contractor or any subcontractor may commence resolution of any dispute covered by the Enforcement Procedure by filing a Request with the Commission. Where the Authority is not the complaining party, the Request shall be served on the Authority. Where the Authority is the complaining party, the Request shall be served on the Contractor at the Notice Address listed in the Agreement, and the non-compliant subcontractor, if any, if such service can be achieved with reasonable effort. The Request shall be filed and served either by hand delivery or by registered or certified mail. The Request shall identify the entities involved in the dispute and state the exact nature of the dispute and the relief sought. If the complaining party seeks a temporary restraining order and/or a preliminary injunction, the Request shall so state in the caption of the Request.

(iii) Service on the Contractor of the Request or any notice provided for by this Section 1 shall constitute service of the Request or notice on all subcontractors who are identified as being in alleged noncompliance in the Request. The Contractor shall promptly serve the Request or notice, by hand delivery or registered or certified mail, on all such subcontractors.

(iv) The TIHDI Job Broker shall have the right to present testimony or documentary evidence at Enforcement Procedure proceedings.

(v) After the filing and the service of a Request, the parties shall negotiate in good faith for a period of 10 business days in an attempt to resolve the dispute; provided that the complaining party may proceed immediately to the Enforcement Procedure, without engaging in such a conference or negotiations, if the facts could reasonably be construed to support the issuance of a temporary restraining order or a preliminary injunction ("Temporary Relief"). The Commission shall determine whether the facts reasonably supported the issuance of Temporary Relief.

(vi) If the dispute is not settled within 10 business days, a hearing shall be held within 90 days of the date of the filing of the Request, unless otherwise agreed by the parties or ordered by the Commission upon a showing of good cause; provided, that if the complaining party seeks a temporary restraining order, the hearing on the motion for a temporary restraining order shall be heard not later than two (2) business days after the filing of the Request, and provided further, if a party seeks a preliminary injunction, such motion shall be heard on 15 days' notice. The Commission shall set the date, time and place for the

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Enforcement Procedure hearing(s) within the proscribed time periods by giving notice by hand delivery to the Authority and the Contractor; except, where a temporary restraining order is sought, the Commission may give notice of the hearing date, time and place to the Authority, Contractor and any affected subcontractor by telephone.

(vii) In the Enforcement Procedure proceedings hereunder, discovery shall be permitted in accordance with Code of Civil Procedure §1283.05.

(b) Commission's Decision. The Commission shall render a decision within 20 days of the date that the hearing on a Request is completed; provided that where a temporary restraining order is sought, the Commission shall render a decision not later than 24 hours after the hearing on the motion. The Commission shall send the decision by certified or registered mail to the Authority, the Contractor and the subcontractor, if any.

(i) The Commission may enter a default award against any party who fails to appear at the hearing; provided said party received actual notice of the hearing. In a proceeding seeking a default award against a party other than the Contractor, the Contractor shall provide proof of service on the party as required by this Article. If the Contractor fails to provide proof of service, the Contractor shall pay \$2,500 as liquidated damages to the Authority, provided that no such damages shall be assessed if the Contractor demonstrates that it made good faith efforts to serve the party. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure §1281.2.

(ii) Except as otherwise provided in this Section 1, the Commission shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of the Agreement, or to negotiate new agreements or provisions between the parties.

(iii) The inquiry of the Commission shall be restricted to the particular controversy that gave rise to the request for the Enforcement Procedure. A decision of the Commission issued hereunder shall be final and binding upon the Authority, Contractor, and subcontractors, if any, sent by mail to the Authority, the Contractor and the subcontractor, if any. The losing party shall pay the Commission's fees and related costs of the Enforcement Procedure. If a subcontractor is the losing party and fails to pay said fees within 30 days of the decision, the Contractor shall pay the fees. Each party shall pay its own attorneys' fees provided that fees may be awarded to the prevailing party if the Commission finds that the Request was frivolous or that the Enforcement Procedure action was otherwise instituted or litigated in bad faith. Judgment upon the Commission's decision may be entered in any court of competent jurisdiction.

(c) Remedies and Sanctions. Except as may otherwise be expressly provided herein, the Commission may impose only the remedies and sanctions set forth below and only against the non-compliant party(ies):

(i) Order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent injunction, to mitigate the effects of the Contractor's failure to make Good Faith Efforts, and/or to require Contractor

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and/or its subcontractors to make such Good Faith Efforts, including, but not limited to, orders enjoining the Contractor from recruiting, screening or hiring (through new hires, transfers or otherwise) any person for employment at the Premises pending resolution of the alleged deficiency(ies) in the Hiring Plan or Contractor's implementation of the Workforce Goals.

(ii) Require the Contractor or Subcontractors to refrain from entering into new contracts related to work related to the Agreement, or from granting extensions or other modifications to existing contracts related to the Agreement, other than those minor modifications or extensions necessary to enable completion of the work covered by the existing contract, with any non-compliant subcontractor until such subcontractor provides assurances satisfactory to the Authority and the Contractor of future Good Faith Efforts to comply with the Workforce Goals.

(iii) Direct the Contractor or subcontractor to cancel, terminate, suspend or cause to be canceled, terminated or suspended, any contract or lease or portion(s) thereof for failure of the subcontractor to make Good Faith Efforts to comply with the Workforce Goals, provided, however that Subcontracts may be continued upon the condition that a program for future compliance is approved by the Authority.

(iv) If the Contractor or subcontractor is found to be in willful breach of its obligations to make Good Faith Efforts to achieve the Workforce Goals, impose financial penalties not to exceed \$50,000 or 10 percent of the total monetary consideration contemplated by the Agreement, whichever is less, for each such breach on the party responsible for the willful breach; provided, however, no penalty shall be imposed pursuant to this paragraph for the first willful breach unless the breaching party has failed to cure after being provided notice and a reasonable opportunity to cure. The Contractor or subcontractor may impose penalties for subsequent willful breaches whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

(v) Direct that the Contractor or subcontractor produce and provide to the Authority any records, data or reports that are necessary to determine if a violation has occurred and/or to monitor the performance of the Contractor or Subcontractor.

(vi) Issue such other relief deemed necessary to ensure that the Hiring Plan is written and implemented, and that Contractor makes Good Faith Efforts to meet its Workforce Goals, including requiring the inclusion or exclusion of specific terms or provisions in the Hiring Plan based on a determination that the term(s) added or removed further the requirements and objectives of this Section 1.

(d) Delays due to enforcement. If Contractor does not timely perform its obligations under the Agreement with the Authority because of a Commission's order against a party other than the Contractor, such order shall be deemed an event of Force Majeure, and the time for any performance by the Contractor shall be extended as provided therein; provided, however, that Contractor shall make good faith efforts to minimize any delays.

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 3, 1862. It contains a report on the state of the Union and the progress of the war.

2. The second part of the document is a report from the Secretary of the War Department, dated January 10, 1862. It contains a detailed account of the military operations and the condition of the army.

3. The third part of the document is a report from the Secretary of the Navy Department, dated January 15, 1862. It contains a detailed account of the naval operations and the condition of the fleet.

4. The fourth part of the document is a report from the Secretary of the Treasury Department, dated January 20, 1862. It contains a detailed account of the financial operations and the condition of the treasury.

5. The fifth part of the document is a report from the Secretary of the Interior Department, dated January 25, 1862. It contains a detailed account of the land and mineral operations and the condition of the department.

6. The sixth part of the document is a report from the Secretary of the War Department, dated February 1, 1862. It contains a detailed account of the military operations and the condition of the army.

7. The seventh part of the document is a report from the Secretary of the Navy Department, dated February 5, 1862. It contains a detailed account of the naval operations and the condition of the fleet.

(e) Exculpatory clause. The Contractor and its subcontractors hereby forever waive and release any and all claims against the Authority for Losses arising under or related to this Section 1.

(f) California law applies. California law, including the California Arbitration Act, Code of Civil Procedure §§1280 through 1294.2, shall govern all the Enforcement Procedure proceedings.

(g) Designation of agent for service. Not later than five (5) days after the execution of this Agreement, the Contractor shall designate a person or business, residing or located in the City and County of San Francisco, as its agent for service of a Request and all notices provided for herein. If the Contractor has an office located in San Francisco, it may designate itself as agent for service. The designation shall be served on

**1.10. Relationship to Other Employment Agreements.** Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce-training agreements or interfere with consent decrees, collective bargaining agreements or existing employment contracts. In the case of collective bargaining agreements, Contractor will take primary responsibility for integrating the requirements of Contractor's Workforce Goals with any such collective bargaining agreements. As necessary, Contractor will attempt to negotiate equivalent first source hiring obligations with relevant unions.

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CHICAGO, ILLINOIS 60607-7073

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## **APPENDIX B BUDGET**

**For an amount not to exceed \$7,290 month, or \$87,480 per year Contractor will provide:**

- 74 hours of janitorial services weekly, including weekends and holidays
- cleaning equipment, materials and supplies
- soap, toilet paper, hand towels, seat covers for all restrooms and kitchens in all venues
- Uniform soap and paper goods dispensers for all restrooms and kitchens in all venues
- transport of equipment and personnel among venues

**For an amount not to exceed \$37,520 per year at the specific request of Special Events Coordinator, or Deputy Executive Director:**

- Carpet cleaning @ \$40.00 per 500 square feet (500 sf minimum service area)
- Additional window cleaning @ \$25 per hour
- Additional janitorial services @ \$25.00 per hour
- Special event services including opening and closing event venues and monitoring event activities @ \$25.00 per hour

The first part of the book discusses the importance of understanding the human mind and how it works. It covers topics such as perception, memory, and learning. The author explains how these processes are interconnected and how they influence our behavior. The second part of the book focuses on the application of this knowledge in various fields, including psychology, education, and business. The author provides examples of how understanding the human mind can lead to more effective communication, better decision-making, and improved performance in the workplace. The book concludes with a summary of the key points discussed and a call to action for readers to apply this knowledge in their own lives.





Notes \_\_\_\_\_

**AGENDA ITEM**  
**TREASURE ISLAND DEVELOPMENT AUTHORITY**  
**City and County of San Francisco**

**Agenda Item No 9.**

**Meeting of April 8, 2003**

**Subject:** Request for Approval of Contract with Rubicon Enterprises, Inc. for landscaping and grounds maintenance services for the period May 2003 through April 2004 for an amount not to exceed \$950,000

**Contact/Phone:** Annemarie Conroy, Executive Director  
Eila Arbuckle, Finance Manager  
274-0660

**SUMMARY OF PROPOSED ACTION**

Authorize execution of a new contract with Rubicon, a member organization of the Treasure Island Homeless Development Initiative, for landscaping and grounds maintenance services for the period May 2003 through April 2004, for an amount not to exceed \$950,000.

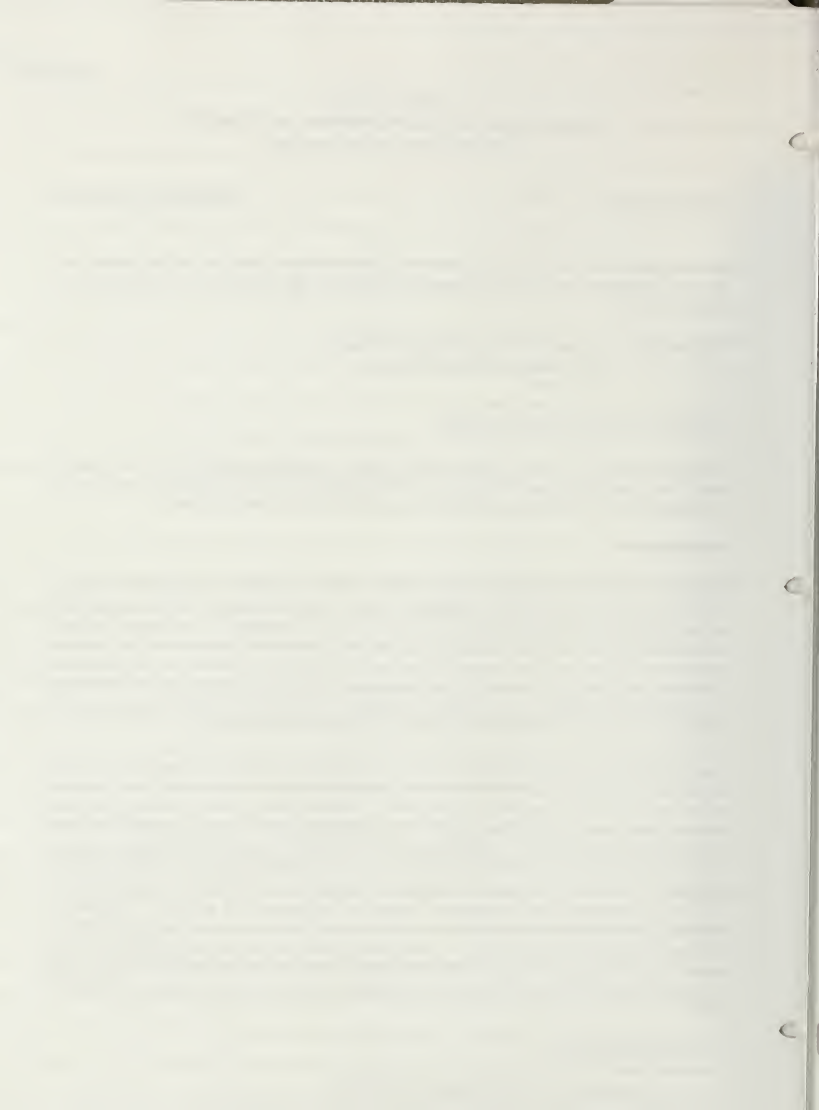
**DISCUSSION**

Rubicon, a member organization of the Treasure Island Homeless Development Initiative (TIHDI), is a non-profit agency organized to provide services to train homeless and other economically disadvantaged persons for jobs. One of its programs is contractual grounds maintenance services. These are identified in the draft Homeless Component of the Treasure Island Reuse Plan as one of the economic development opportunities available to assist homeless and other economically disadvantaged San Franciscans. The Board of Supervisors has authorized the Authority to engage in sole source negotiations with TIHDI member organizations for contracts for economic development opportunities identified in the Reuse Plan.

Landscaping and grounds maintenance services are required to fulfill the requirements of the agreement for caretaker services between the Authority and the Navy, as well as to promote public health and safety on former naval station Treasure Island. The TI Project staff have divided Treasure and Yerba Buena Islands into landscaping parcels and have established three levels of landscaping services. Maps of the parcels are Exhibits 1 and 2 to the attached contract, and a detailed outline of each of the levels of service is provided in Appendix A, "Services to be provided by contractor". Rubicon will follow the requirements of the City and County of San Francisco's Integrated Pest Management Program in carrying out its activities. The cost of regularly scheduled grounds maintenance services for the 12-month contract period is \$490,648, with monthly payments of \$58,865.75. Additionally, \$243,611 of the total \$950,000 contract amount is provided to fund non-scheduled landscape and ground maintenance services and playground clean-up and rehabilitation as requested by the written authorization of designated staff.

**RECOMMENDATION**

Staff recommends approval of the contract with Rubicon.



**RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A CONTRACT WITH RUBICON ENTERPRISES, INC., A MEMBER ORGANIZATION OF THE TREASURE ISLAND HOMELESS DEVELOPMENT INITIATIVE AND A CALIFORNIA PUBLIC BENEFIT CORPORATION, FOR AN AMOUNT NOT TO EXCEED \$950,000 TO PROVIDE LANDSCAPING AND GROUNDS MAINTENANCE SERVICES FOR THE PERIOD MARCH 2003 THROUGH FEBRUARY 2004**

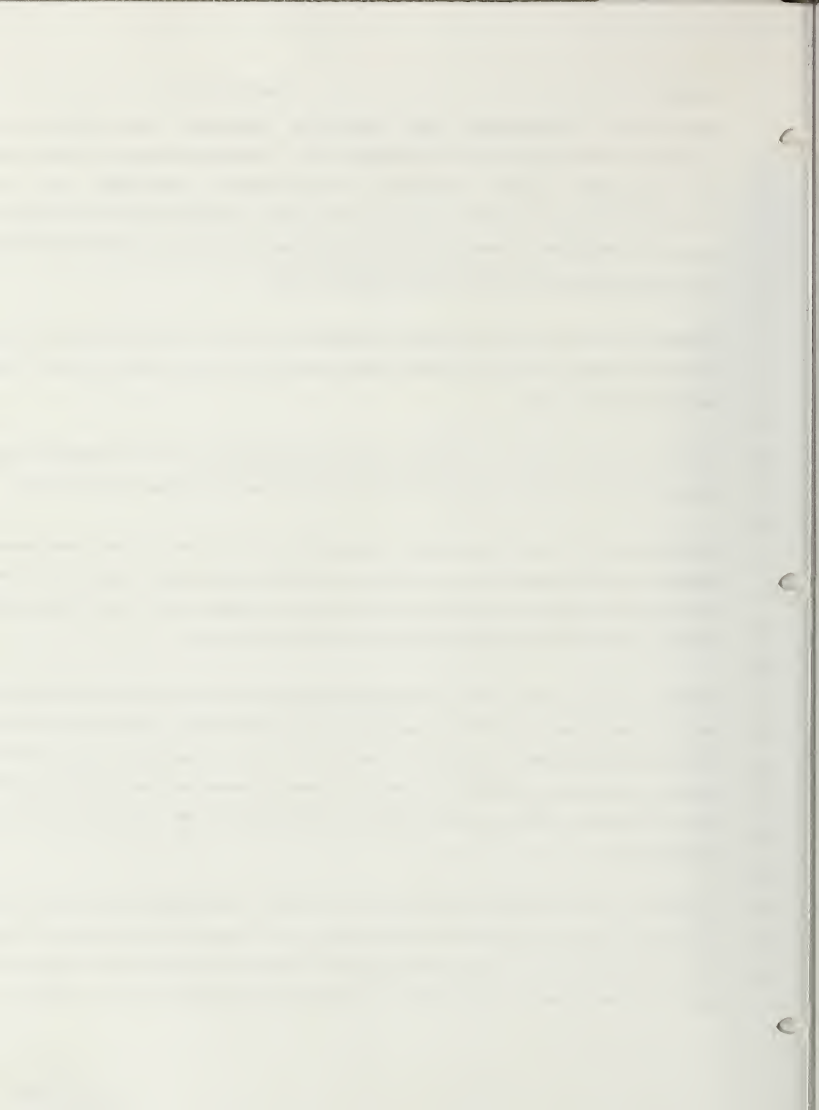
WHEREAS, Naval Station Treasure Island is a military base located on Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by the United States of America ("the Federal Government"); and,

WHEREAS, Treasure Island was selected for closure and disposition by the Base Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its subsequent amendments; and,

WHEREAS, In 1995, the General Services Administration and the Bureau of Land Management determined that Yerba Buena Island was surplus to the Federal Government's needs and could be transferred to the administrative jurisdiction of the Department of Defense under the Base Closure and Realignment Act of 1990 and disposed of together with Treasure Island; and,

WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the Base for the public interest, convenience, welfare and common benefit of the inhabitants of the City and County of San Francisco; and,

WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (the "Act"), the California Legislature (I) designated the Authority as a redevelopment agency under California redevelopment law with authority over the Base upon approval of the City's Board of



Supervisors, and (ii) with respect to those portions of the Base which are subject to Tidelands Trust, vested in the Authority the Authority to administer the public trust for commerce, navigation and fisheries as to such property; and

WHEREAS, The Board of Supervisors approved the designation of the Authority as a redevelopment agency for Treasure Island in 1997; and,

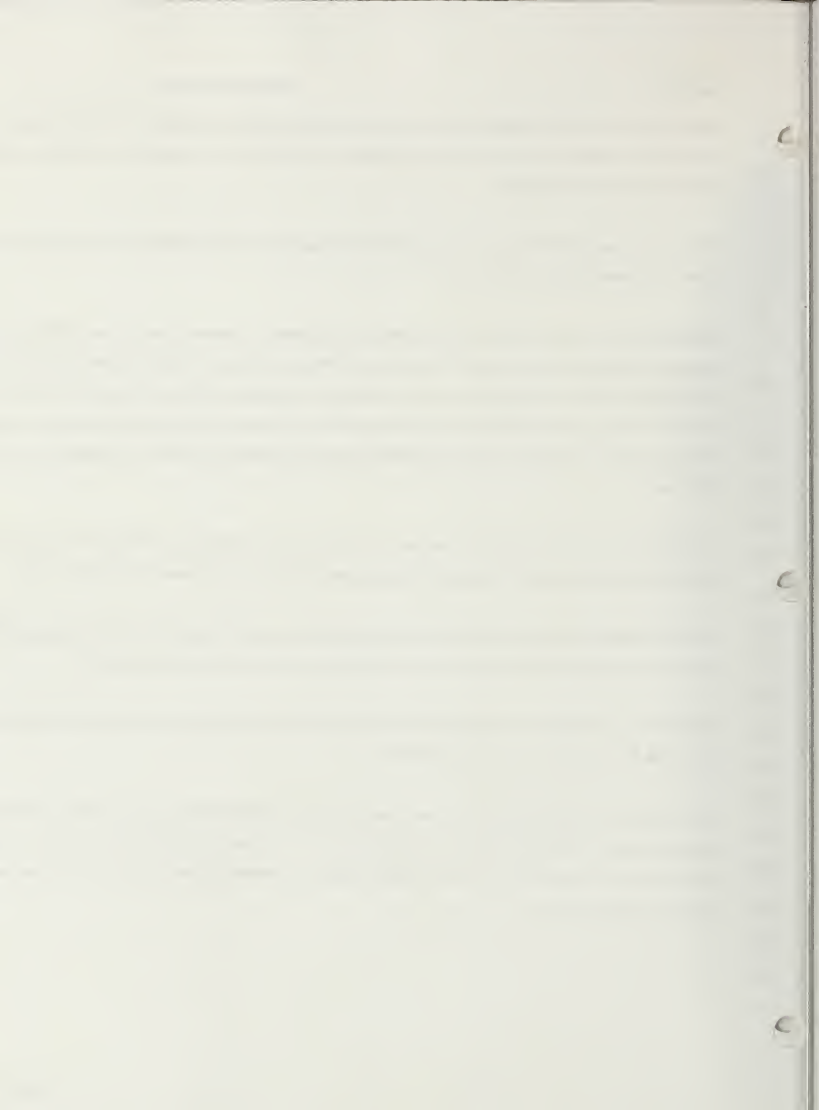
WHEREAS, the City and County of San Francisco negotiated a proposed Base Closure Homeless Assistance Agreement and Option to Lease Real Property with the Treasure Island Homeless Development Initiative, a California nonprofit corporation organized to utilize the resources of former naval base Treasure Island available to help fill gaps in the continuum of care for homeless persons and families, pursuant to the Base Closure Community Redevelopment and Homeless Assistance Act of 1994; and,

WHEREAS, the Authority wishes to support the Treasure Island Homeless Development Initiative pursuant to the Base Closure Community Redevelopment and Homeless Assistance Act of 1994; and

WHEREAS, the Contractor represents and warrants that it is qualified to perform the landscaping and grounds maintenance services required by the Authority as set forth under this Contract; and

WHEREAS, the Authority has negotiated with the Contractor to reach agreement on the scope of work, and budget for the services shown in Appendix A;

Now, therefore be it RESOLVED, That the Authority hereby authorizes the Executive Director of the Project to execute a contract with Rubicon Enterprises, Inc., a California public benefit corporation, for an amount not to exceed \$950,000 to provide landscaping and grounds maintenance services for former naval base Treasure Island.



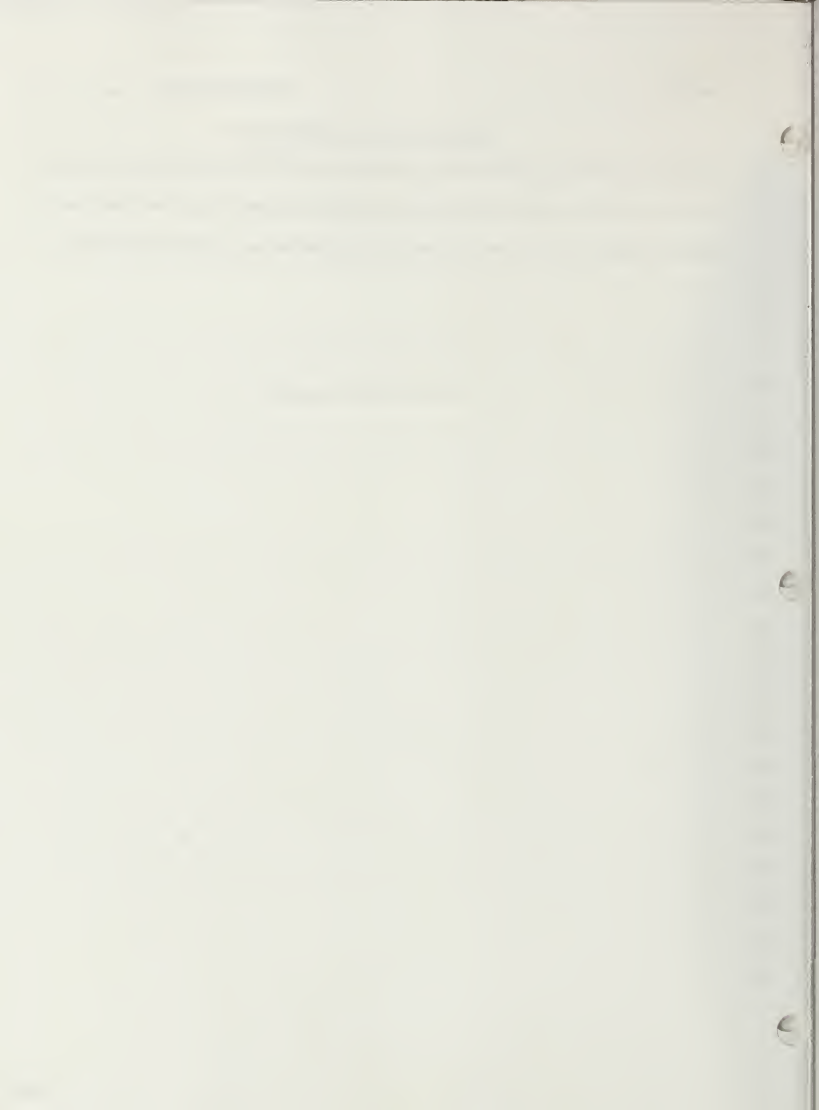


**CERTIFICATE OF SECRETARY**

I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors at a properly noticed meeting on April 9, 2003.

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William Fazande, Secretary







**City and County of San Francisco  
TREASURE ISLAND DEVELOPMENT AUTHORITY  
San Francisco, California 94130**

Scope & Budget of the Agreement between the Treasure Island Development Authority and

**RUBICON ENTERPRISES, INC.**

**APPENDIX A  
SERVICES TO BE PROVIDED BY CONTRACTOR**

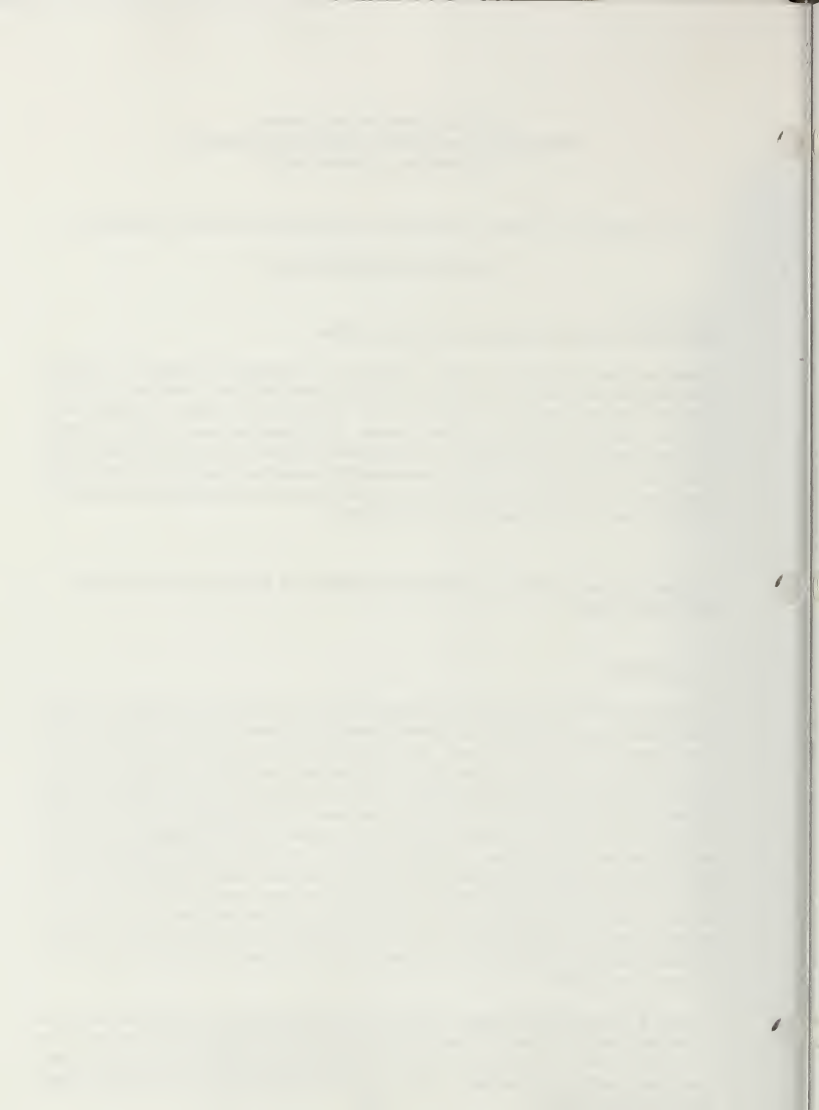
Contractor shall provide all labor, materials, and equipment necessary to perform groundskeeping and landscape maintenance services on each Base parcel identified in Exhibit 1, "Map of Treasure Island" and Exhibit 2, "Map of Yerba Buena Island" according to the following Landscape Maintenance Specifications. In fulfilling the terms of this Agreement, Contractor shall follow the Integrated Pest Management Program of the City and County of San Francisco. In performing its rights and responsibilities under this Agreement, Contractor shall comply with the workforce hiring goals for qualified economically disadvantaged San Francisco residents as provided in Addendum 1 to this Appendix A.

**LANDSCAPE MAINTENANCE SPECIFICATIONS FOR TREASURE AND YERBA BUENA ISLANDS**

**Level 1 Services**

**Turf Grass Mowing and Associated Cleanup:** All turf areas shall be maintained in a once per week during the growing season and twice per month for the period November 15 through March 1, an average of two times per month. Turf grass height shall be maintained between 2 inches and 3.5 inches at all times. Mower blades shall be sharp and provide a clean and even cut. Mower blades shall be sharp and provide a clean and even cut. Prior to mowing, all trash, papers, and other debris shall be removed from turf areas. Surface imperfections such as gopher mounds shall be leveled out. Rubicon shall repair or replace any items damaged as a result of any Rubicon mowing operation. All edges along curbs, sidewalks, roadways, and other paved areas, and around light poles, hydrants, light guards, and signs shall be trimmed on once per week. Tree wells shall be maintained around all trees and large shrubs growing in lawn and turf areas. A weed control program shall be implemented to achieve turf areas relatively free of broadleaf weeds and other targeted weeds. All clippings shall be cleared from walkways, roadways, and other paved areas. Rubicon shall recycle and reuse waste plant material to the greatest extent possible.

**Annual & Perennial Color Plants:** Annual color shall be planted in specified areas as directed by assigned staff of the Mayor's Treasure Island Project Office. Planting shall occur three times per year by October 15, April 1, and July 15. Plant beds shall be maintained at all times to insure good plant health and appearance. Plant beds shall be dressed with fine, uniform organic Rubicon P-500 (4/03—05/04)



compost. It is estimated that no more than 1,000 flats of annuals (333 flats per planting session) and some perennials will be required.

**Trees and Shrubs:** All trees and shrubs shall be pruned to as required to promote proper health, provide safe passage, maintain a healthy and pleasing appearance, and prevent interference with pedestrian and vehicular traffic. Trees and shrubs shall be treated as necessary to prevent disease, fungus, and insect damage. Trees shall be pruned to keep their canopies from extending into pathways. All tree pruning shall be limited to heights under 12 feet. Pruning shall be performed to: prevent growth in front of windows, over entranceways and walkways, and in locations where visibility at street intersections would be obstructed; remove dead, diseased or damaged growth; evenly form or balance trees and shrubs to maintain their established shape; informal hedges or screen plantings shall not be converted to formal shapes; remove tree branches up to eight inches (8") in diameter and within ten feet (10') of the ground if such branches extend over pathways or roads; extensive pruning and "cut back" activities shall be accomplished in the winter to give trees sufficient time to recover before the growing season; ivy and ground cover shall be kept to a minimum of eight inches (8") from shrubs and trees; a 3-inch layer of mulch will be installed over bare soil in shrub areas to discourage weeds and improve soil. Any abnormal and large infestation of insects or disease organisms that cause extensive damage to mature trees, or to a great number of trees, shall be performed as directed at an additional cost.

**Fertilization, Weed Control, Fungicides and Insecticides:** Fertilization shall be applied up to four (4) times per year to promote the proper health and appearance of turf, shrubs, trees, groundcover, and color areas. A complete fertilizer with an analysis of 16-6-6 or other commercial liquid fertilizers are not acceptable. Herbicides, fungicides, insecticides and lime shall be applied as necessary to maintain superior plant health and appearance.

**Irrigation:** Irrigation shall be performed in a manner that promotes proper plant health and growth. Irrigation shall include the watering of lawns, shrubs, trees, planting areas, round cover and containerized plants. Rubicon shall provide back-flow prevention devices approved by the San Francisco Department of Public Works on all hoses that are used for watering and all connections made to fire hydrants.

At the Facilities Manager's sole discretion, Rubicon shall be responsible for replacing or repairing damage caused to fire hydrants through Rubicon's use of any unapproved back-flow devices. Rubicon shall also repair or replace, at the Facilities Manager's sole discretion, damage caused by Rubicon to sprinkler heads, valves, piping, fire hydrants, or any other equipment. Rubicon shall not be responsible for replacing or repairing any irrigation system components that wear out or fail as a result of normal use, unless directed to do so under a separate additional work agreement. The Facilities Manager shall provide water for irrigation and electricity for irrigation controllers, and shall be responsible for maintaining any repairing any underground piping located more than one foot from any sprinkler head.

**Weed Control In Paved Areas:** Weeds shall be removed from all asphalt and other Paved areas. Herbicides shall be applied to prevent re-growth.





**Policing:** All maintenance areas shall be policed at least once per week to remove paper and other trash type litter.

**Debris Removal, and Storm Damage Cleanup:** All maintenance areas shall be cleaned two (2) times per month to remove debris, leaves, paper, dead limbs, bark, pine needles, etc. Debris, silt, and vegetation shall be removed from gutters, curb inlets, and gratings. Debris from storms shall be removed as soon as possible.

**Playground, Sandboxes, Ball Fields, and Tennis Courts:** Playgrounds, sandboxes, ball fields, and tennis courts shall be kept free of weeds and debris. Sandboxes shall be raked once a week to remove foreign objects.

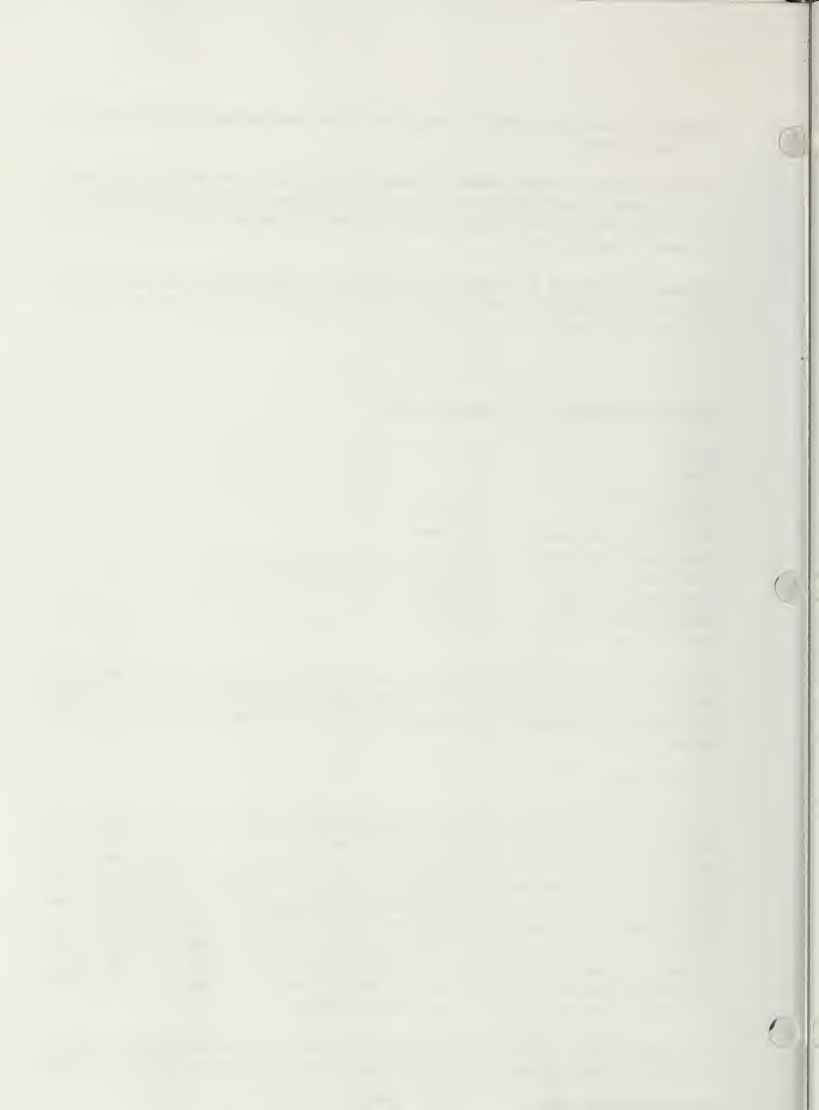
<u>Level 1 Task Summary</u>	<u>Frequency / Year</u>
Policing	52
Mowing	43
Edging/Trimming	43
Fertilization	as needed
Shrub and Tree maintenance	as needed
Disease and Insect Control	as needed
Weed Control, Lawns	3 times PLUS spot spraying as needed
Storm Damage Cleanup	as needed
General Debris Pick-up	as needed
Hand irrigation	54

These frequencies are average, projected amounts of service that are projected to provide the standard of maintenance described above. Depending on overall weather patterns, and associated plant responses, some tasks may be performed more times than shown and others less times than shown.

## **Level 2 Services**

**Turf Grass Mowing and Associated Cleanup:** Turf areas shall be mowed an average of two times per month. Turf grass height shall be maintained between 2 inches and 4 inches at all times. Mower blades shall be sharp and provide a clean and even cut. Mower blades shall be sharp and provide a clean and even cut. Prior to mowing, all trash, papers, and other debris shall be removed from turf areas. Surface imperfections such as gopher mounds shall be leveled out. Rubicon shall repair or replace any items damaged as a result of any Rubicon mowing operation. All edges along curbs, sidewalks, roadways, and other paved areas, and around light poles, hydrants, light guards, and signs shall be trimmed on once per month. Tree wells shall be maintained around all trees and large shrubs growing in lawn and turf areas. All clippings shall be cleared from walkways, roadways, and other paved areas.

**Trees and Shrubs:** All trees and shrubs shall be pruned to provide safe passage, maintain a healthy and pleasing appearance, and prevent interference with pedestrian and vehicular traffic.



Trees and shrubs shall be treated as necessary to prevent disease, fungus, and insect damage. Any abnormal and large infestation of insects or disease organisms that cause extensive damage to mature trees, or to a great number of trees, shall be performed as directed at an additional cost. Shrub beds shall be kept free of weeds, debris, sucker growth, and dead plant material.

**Irrigation:** Irrigation shall be performed in a manner that promotes good appearance of landscaped areas. Irrigation shall include the watering of lawns, shrubs, tree, ground cover and containerized plants. Rubicon shall provide back-flow prevention devices approved by the San Francisco Department of Public Works on all hoses that are used for watering and all connections made to fire hydrants.

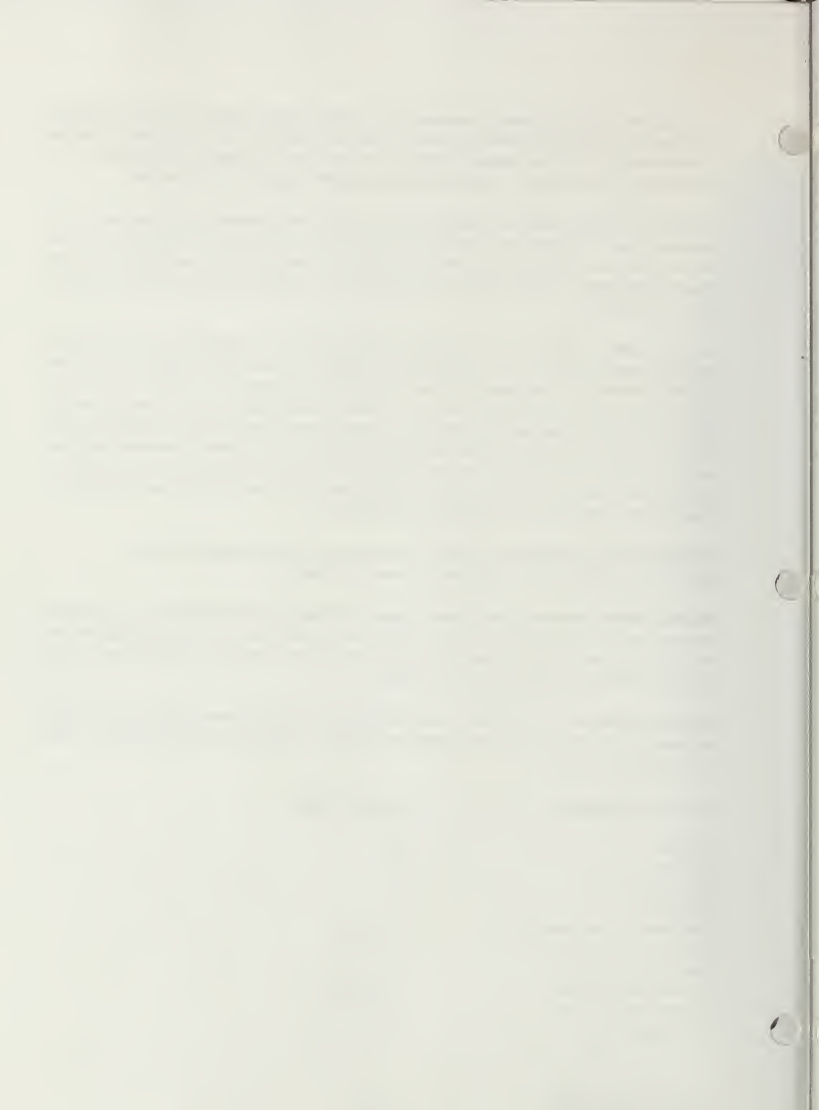
At the Facilities Manager's sole discretion, Rubicon shall be responsible for replacing or repairing damage caused to fire hydrants through Rubicon's use of any unapproved back-flow devices. Rubicon shall also repair or replace, at the Facilities Manager's sole discretion, damage caused by Rubicon to sprinkler heads, valves, piping, fire hydrants, or any other equipment. Rubicon shall not be responsible for replacing or repairing any irrigation system components that wear out or fail as a result of normal use, unless directed to do so under a separate additional work agreement. The Facilities Manager shall provide water for irrigation and electricity for irrigation controllers, and shall be responsible for maintaining any repairing any underground piping located more than one foot from any sprinkler head.

**Weed Control In Paved Areas:** Weeds shall be removed from all asphalt and other Paved areas. Herbicides shall be applied to prevent re-growth.

**Policing, Debris Removal, and Storm Damage Cleanup:** All maintenance areas shall be policed at least twice per month to remove debris, leaves, paper, dead limbs, bark, pine needles, etc. Debris, silt, and vegetation shall be removed from gutters, curb inlets, and gratings. Debris from storms shall be removed as soon as possible.

**Playground, Sandboxes, Ball Fields, and Tennis Courts:** Playgrounds, sandboxes, ball fields, and tennis courts shall be kept free of weeds and debris. Sandboxes shall be raked once a week to remove foreign objects.

<u>Level 2 Task Summary</u>	<u>Frequency / Year</u>
Policing	24
Mowing	24
Edging/Trimming	24
Fertilization	0
Shrub and Tree maintenance	as needed
Disease and Insect Control	as needed
Weed Control, Lawns	0
Storm Damage Cleanup	as needed
General Debris Pickup	as needed
Hand Irrigation	36



These frequencies are average projected amounts of service that we feel will be required to provide the standard of maintenance described above. Depending on overall weather patterns and associated plant responses we may perform some tasks more times than shown and others less times than shown.

### **Level 3 Services**

**Mowing and Associated Cleanup:** Grass and weeds shall be cut 16 times per year. Prior to mowing, all trash and debris, including leaves, paper and other objects within the maintenance area shall be removed. Grass/weeds shall be maintained at a uniform height Of not less than 2" and not more than 5".

**Trees and Shrubs:** All trees and shrubs shall be pruned as required to encourage proper health and to maintain a pleasing appearance. Any extensive pruning or "cut back" shall be accomplished in the winter or during the dormant season. Ivy and ground cover shall be kept a minimum of eight inches (8") from shrubs and trees. Shrub beds shall be kept free of weeds, debris, sucker growth, and dead plant material.

**Weed Control In Paved Areas:** Weeds shall be removed from all asphalt and other paved areas four times per year. Herbicides shall b applied to prevent re-growth.

**Policing, Debris Removal, and Storm Damage Cleanup:** All maintenance areas shall be policed at least twice per month to remove debris, leaves, paper, dead limbs, bark, pine needles, etc. Debris, silt, and vegetation shall be removed from gutters, curb inlets, and gratings. Debris from storms shall be removed as soon as possible.

**Playgrounds, Sandboxes, Ball Fields, and Tennis Courts:** Playgrounds, sandboxes, ball fields, and tennis courts shall be kept free of weeds and debris. Sandboxes shall be raked once a month to remove foreign objects.

**Irrigation:** Level 3 areas shall not include any irrigation

### **Miscellaneous Specifications**

**Firebreak Requirements:** Certain areas on Yerba Buena Island shall be maintained as firebreaks in the following manner as directed by the Division of Fire Prevention and Investigation San Francisco Fire Department.

All buildings under the care and management of the City of San Francisco shall have the areas around them cleared to a distance of a minimum of 30 feet. All roadways on City property shall have the areas on either side of them cleared to a distance of at minimum of 10 feet. The cleared areas shall be kept free of combustible materials such as dry weeds, shrubs, trash, and fallen debris from trees. Normal leaf and pine needle accumulation shall not be removed. Weeds shall be cut or mowed to a maximum height vegetation remains green throughout the year and presents little or no fire hazard shall be left alone. Any vegetation obstructing roadways or growing

1. The first part of the report deals with the general situation of the country and the progress of the work during the year.

2. The second part of the report deals with the results of the work during the year and the progress of the work during the year.

3. The third part of the report deals with the results of the work during the year and the progress of the work during the year.

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10. The tenth part of the report deals with the results of the work during the year and the progress of the work during the year.

against buildings shall removed as directed by the Facilities Manager. Removal of any trees over 4 inches in diameter or over 12 feet high within the fire break areas shall only be performed as additional work under a separate agreement.

**Sea Wall Requirements:** The sea wall is defined as the flat area adjacent to the rock revetment that comprises the perimeter of Treasure Island. From the end of Palm Avenue at 9th Street the sea wall runs around the housing area and returns to the harbor behind Building 1. Weeds in this area shall be kept at a height of 4 inches or less by means of mechanical and chemical control. Trash shall be removed once per month. Any debris that occurs in other areas along the sea wall shall be the responsibility of others unless negotiated as extra work separate from this agreement.

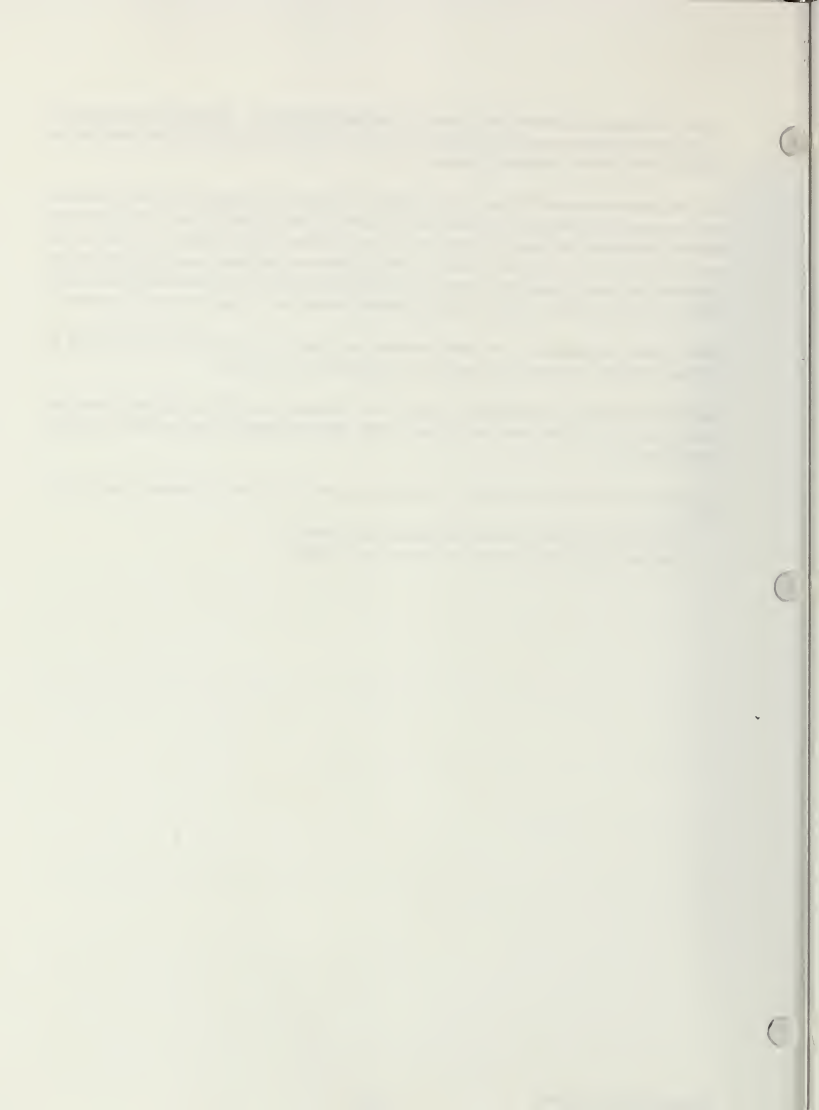
**Storm Drains Requirements for Both Islands:** Storm drains and V ditches shall be cleaned as often as necessary during the rainy season in to keep them clear of debris.

**Garbage Cans and Tourist Stop at Front Gate:** Garbage cans shall be emptied 3 times per week. The tourist parking area and sidewalk at the front gate shall be swept or blown Monday through Friday.

For any questions, to report damages, or problems, contact the Mayor's Treasure Island Project Office:

Lori Mazzola, Special Events Coordinator, tel: 274-0312

Stephen Proud, Deputy Executive Director, tel:274-0660





## ADDENDUM 1 TO APPENDIX A

### 1. WORKFORCE HIRING GOALS

In performing its rights and responsibilities under this Agreement, Contractor shall comply with the following workforce hiring goals for qualified homeless or otherwise economically disadvantaged persons and San Francisco residents.

**1.1 Contractor's Workforce Hiring Goals.** Contractor shall use Good faith Efforts to meet the work force hiring goals described herein (the "Workforce Goals"). For purposes of this Section 1, Contractor's Good Faith Efforts shall include, but not be limited to, the following:

(a) Submitting detailed written plans describing how Contractor intends to meet the Workforce Goals (a "Hiring Plan").

(b) Listing jobs available on the Premises with the TIHDI Job Broker at least two weeks prior to advertising for applicants elsewhere;

(c) Considering for appropriate job openings all candidates who are qualified, screened and referred to it by the TIHDI Job Broker;

(d) Establishing with TIHDI mutually acceptable means of communicating about job openings and provide information about jobs and about outcomes of referrals within a reasonable time upon request by the TIHDI Job Broker;

(e) Consulting with the TIHDI Job Broker on an ongoing basis about how to meet Contractor's Workforce Goals; and

(f) Meeting and conferring with the TIHDI Job Broker to discuss and attempt to resolve any problems with Contractor meeting its Workforce Goals.

**1.2 Burden of Proof.** If the Workforce Goals are not met, Contractor shall have the burden of establishing in any Enforcement Procedure described in Section 1.9 below that it made Good Faith Efforts and that the candidates who were selected were better qualified for work than the homeless or economically disadvantaged persons who applied or were referred by the TIHDI Job Broker.

**1.3 Construction Workforce.** Without obligation (other than as expressly set forth herein), Contractor shall also be required to give consideration for hiring on all construction projects on the Premises to qualified homeless or otherwise economically disadvantaged persons, and to qualified residents of San Francisco whose annual income, at the time of hire, is at or below fifty percent (50%) of median income for the City as determined by HUD.

**1.4 Subcontracting.** Contractor will consider subcontracting certain tasks to be performed by Contractor under this Agreement to TIHDI member organizations, particularly for grounds keeping, janitorial, recycling and deconstruction activities. Subcontracts with TIHDI

# 1. Introduction

The purpose of this study is to investigate the effects of various factors on the performance of a system. The study is organized as follows:

2. Literature Review

2.1. Background

2.2. Related Work

2.3. Research Gap

2.4. Objectives

2.5. Scope

2.6. Limitations

2.7. Organization

2.8. Summary

2.9. Conclusion

2.10. Acknowledgments

2.11. References

2.12. Appendix

organizations will be included for purposes of determining Contractor's Good Faith Efforts to meet the Work Force Goals.

### **1.5 Hiring Plan.**

(a) Contractor shall submit its Hiring Plan to the Authority within sixty (60) days of the Commencement Date. Contractor's Hiring Plan shall include a detailed description of how Contractor intends to meet its Workforce Goals, which description should include community outreach and recruiting efforts, hiring procedures (e.g., phased hiring), a projected schedule for meeting the Workforce Goals, and alternative courses of action if it appears that the Workforce Goals will not be met.

(b) During the first 30 days after the Hiring Plan is submitted, the Authority and Contractor shall negotiate in good faith solutions to any deficiencies in the Hiring Plan as reasonably determined by the Authority. At the expiration of such 30-day period, the Authority shall advise Contractor, through a written "Notice of Noncompliance," of any alleged deficiency in the Hiring Plan remaining at the close of such negotiations. The Notice of Noncompliance shall state the specific basis for the alleged deficiency(ies) and the Authority's suggested cure. Contractor shall advise the Authority within 10 days of its receipt of the Notice of Noncompliance whether Contractor accepts the suggested cure. If the Contractor rejects the suggested cure, either party may proceed immediately to the Enforcement Procedure pursuant to Section 1.9 below by filing a Request for Enforcement ("Request") on the Hiring Plan. The Request shall specify the issues presented and the relief requested.

**1.6 Reports.** Contractor shall prepare reports regarding the composition of Contractor's work force reasonably satisfactory to the Authority.

**1.7 Matters Subject to Enforcement Procedure.** In addition to the initial preparation of the Hiring Plan, all matters related to implementing the Hiring Plan and the Workforce Goals are subject to the Enforcement Procedure described in Section 1.9 below.

**1.8 Implementation of Enforcement Procedure.** The Enforcement Procedure, as provided for in Section 1.9 below, shall be the exclusive procedure for resolving any dispute concerning the interpretation or implementation of the Hiring Plan or any alleged deficiency in Contractor's Good Faith Efforts to achieve the Workforce Goals. The Enforcement Procedure shall be implemented by the Human Rights Commission of the City of County of San Francisco (the "Commission"), which shall have the powers described below unless otherwise provided by law.

(a) All subcontracts related to the Agreement ("Subcontracts") shall incorporate the provisions of this Section 1 and the Authority shall have the right to enforce said obligations, requirements and agreements against the Contractor or its subcontractors. Contractor shall require, by contract, that each subcontractor participates in Enforcement Procedure proceedings in which it may be identified in a Request, and that each subcontractor shall be bound by the outcome of such Enforcement Procedure according to the decision of the Commission.

### **1.9 Enforcement Procedure.**



(a) If the Authority reasonably determines that Contractor has failed to use Good Faith Efforts to meet the Workforce Goals, or for any other matter subject to this Enforcement Procedure the Authority shall send a written Notice of Noncompliance to Contractor describing the basis for its determination and suggesting a means to cure any deficiencies. If Contractor does not, in the reasonable discretion of the Authority, cure the deficiency within ten (10) days, the matter shall be submitted to the following Enforcement Procedure.

(i) Prior to the filing and service of a Request, the parties to any dispute shall meet and confer in an attempt to resolve the dispute.

(ii) The Authority, Contractor or any subcontractor may commence resolution of any dispute covered by the Enforcement Procedure by filing a Request with the Commission. Where the Authority is not the complaining party, the Request shall be served on the Authority. Where the Authority is the complaining party, the Request shall be served on the Contractor at the Notice Address listed in the Agreement, and the non-compliant subcontractor, if any, if such service can be achieved with reasonable effort. The Request shall be filed and served either by hand delivery or by registered or certified mail. The Request shall identify the entities involved in the dispute and state the exact nature of the dispute and the relief sought. If the complaining party seeks a temporary restraining order and/or a preliminary injunction, the Request shall so state in the caption of the Request.

(iii) Service on the Contractor of the Request or any notice provided for by this Section 1 shall constitute service of the Request or notice on all subcontractors who are identified as being in alleged noncompliance in the Request. The Contractor shall promptly serve the Request or notice, by hand delivery or registered or certified mail, on all such subcontractors.

(iv) The TIHDI Job Broker shall have the right to present testimony or documentary evidence at Enforcement Procedure proceedings.

(v) After the filing and the service of a Request, the parties shall negotiate in good faith for a period of 10 business days in an attempt to resolve the dispute; provided that the complaining party may proceed immediately to the Enforcement Procedure, without engaging in such a conference or negotiations, if the facts could reasonably be construed to support the issuance of a temporary restraining order or a preliminary injunction ("Temporary Relief"). The Commission shall determine whether the facts reasonably supported the issuance of Temporary Relief.

(vi) If the dispute is not settled within 10 business days, a hearing shall be held within 90 days of the date of the filing of the Request, unless otherwise agreed by the parties or ordered by the Commission upon a showing of good cause; provided, that if the complaining party seeks a temporary restraining order, the hearing on the motion for a temporary restraining order shall be heard not later than two (2) business days after the filing of the Request, and provided further, if a party seeks a preliminary injunction, such motion shall be heard on 15 days' notice. The Commission shall set the date, time and place for the

1. The first part of the report deals with the general situation of the country and the progress of the work during the year. It also mentions the results of the various investigations and the work done in the different departments.

## 2. The second part of the report deals with the results of the various investigations and the work done in the different departments.

The first part of this section deals with the results of the investigations carried out in the different departments. It mentions the progress made in the various fields of research and the results of the experiments conducted. It also mentions the work done in the different departments and the progress made in the various fields of research.

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Enforcement Procedure hearing(s) within the proscribed time periods by giving notice by hand delivery to the Authority and the Contractor; except, where a temporary restraining order is sought, the Commission may give notice of the hearing date, time and place to the Authority, Contractor and any affected subcontractor by telephone.

(vii) In the Enforcement Procedure proceedings hereunder, discovery shall be permitted in accordance with Code of Civil Procedure §1283.05.

(b) Commission's Decision. The Commission shall render a decision within 20 days of the date that the hearing on a Request is completed; provided that where a temporary restraining order is sought, the Commission shall render a decision not later than 24 hours after the hearing on the motion. The Commission shall send the decision by certified or registered mail to the Authority, the Contractor and the subcontractor, if any.

(i) The Commission may enter a default award against any party who fails to appear at the hearing; provided said party received actual notice of the hearing. In a proceeding seeking a default award against a party other than the Contractor, the Contractor shall provide proof of service on the party as required by this Article. If the Contractor fails to provide proof of service, the Contractor shall pay \$2,500 as liquidated damages to the Authority, provided that no such damages shall be assessed if the Contractor demonstrates that it made good faith efforts to serve the party. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure §1281.2.

(ii) Except as otherwise provided in this Section 1, the Commission shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of the Agreement, or to negotiate new agreements or provisions between the parties.

(iii) The inquiry of the Commission shall be restricted to the particular controversy that gave rise to the request for the Enforcement Procedure. A decision of the Commission issued hereunder shall be final and binding upon the Authority, Contractor, and subcontractors, if any, sent by mail to the Authority, the Contractor and the subcontractor, if any. The losing party shall pay the Commission's fees and related costs of the Enforcement Procedure. If a subcontractor is the losing party and fails to pay said fees within 30 days of the decision, the Contractor shall pay the fees. Each party shall pay its own attorneys' fees provided that fees may be awarded to the prevailing party if the Commission finds that the Request was frivolous or that the Enforcement Procedure action was otherwise instituted or litigated in bad faith. Judgment upon the Commission's decision may be entered in any court of competent jurisdiction.

(c) Remedies and Sanctions. Except as may otherwise be expressly provided herein, the Commission may impose only the remedies and sanctions set forth below and only against the non-compliant party(ies):

(i) Order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent injunction, to mitigate the effects of the Contractor's failure to make Good Faith Efforts, and/or to require Contractor





and/or its subcontractors to make such Good Faith Efforts, including, but not limited to, orders enjoining the Contractor from recruiting, screening or hiring (through new hires, transfers or otherwise) any person for employment at the Premises pending resolution of the alleged deficiency(ies) in the Hiring Plan or Contractor's implementation of the Workforce Goals.

(ii) Require the Contractor or Subcontractors to refrain from entering into new contracts related to work related to the Agreement, or from granting extensions or other modifications to existing contracts related to the Agreement, other than those minor modifications or extensions necessary to enable completion of the work covered by the existing contract, with any non-compliant subcontractor until such subcontractor provides assurances satisfactory to the Authority and the Contractor of future Good Faith Efforts to comply with the Workforce Goals.

(iii) Direct the Contractor or subcontractor to cancel, terminate, suspend or cause to be canceled, terminated or suspended, any contract or lease or portion(s) thereof for failure of the subcontractor to make Good Faith Efforts to comply with the Workforce Goals, provided, however that Subcontracts may be continued upon the condition that a program for future compliance is approved by the Authority.

(iv) If the Contractor or subcontractor is found to be in willful breach of its obligations to make Good Faith Efforts to achieve the Workforce Goals, impose financial penalties not to exceed \$50,000 or 10 percent of the total monetary consideration contemplated by the Agreement, whichever is less, for each such breach on the party responsible for the willful breach; provided, however, no penalty shall be imposed pursuant to this paragraph for the first willful breach unless the breaching party has failed to cure after being provided notice and a reasonable opportunity to cure. The Contractor or subcontractor may impose penalties for subsequent willful breaches whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

(v) Direct that the Contractor or subcontractor produce and provide to the Authority any records, data or reports that are necessary to determine if a violation has occurred and/or to monitor the performance of the Contractor or Subcontractor.

(vi) Issue such other relief deemed necessary to ensure that the Hiring Plan is written and implemented, and that Contractor makes Good Faith Efforts to meet its Workforce Goals, including requiring the inclusion or exclusion of specific terms or provisions in the Hiring Plan based on a determination that the term(s) added or removed further the requirements and objectives of this Section 1.

(d) Delays due to enforcement. If Contractor does not timely perform its obligations under the Agreement with the Authority because of a Commission's order against a party other than the Contractor, such order shall be deemed an event of Force Majeure, and the time for any performance by the Contractor shall be extended as provided therein; provided, however, that Contractor shall make good faith efforts to minimize any delays.

1. The first part of the report deals with the general situation of the country and the position of the various groups of the population. It is a very general and superficial treatment of the subject, but it is a good starting point for a more detailed study.

2. The second part of the report deals with the economic situation of the country. It is a very detailed and thorough treatment of the subject, and it is a good starting point for a more detailed study.

3. The third part of the report deals with the social situation of the country. It is a very detailed and thorough treatment of the subject, and it is a good starting point for a more detailed study.

4. The fourth part of the report deals with the political situation of the country. It is a very detailed and thorough treatment of the subject, and it is a good starting point for a more detailed study.

5. The fifth part of the report deals with the cultural situation of the country. It is a very detailed and thorough treatment of the subject, and it is a good starting point for a more detailed study.

6. The sixth part of the report deals with the military situation of the country. It is a very detailed and thorough treatment of the subject, and it is a good starting point for a more detailed study.

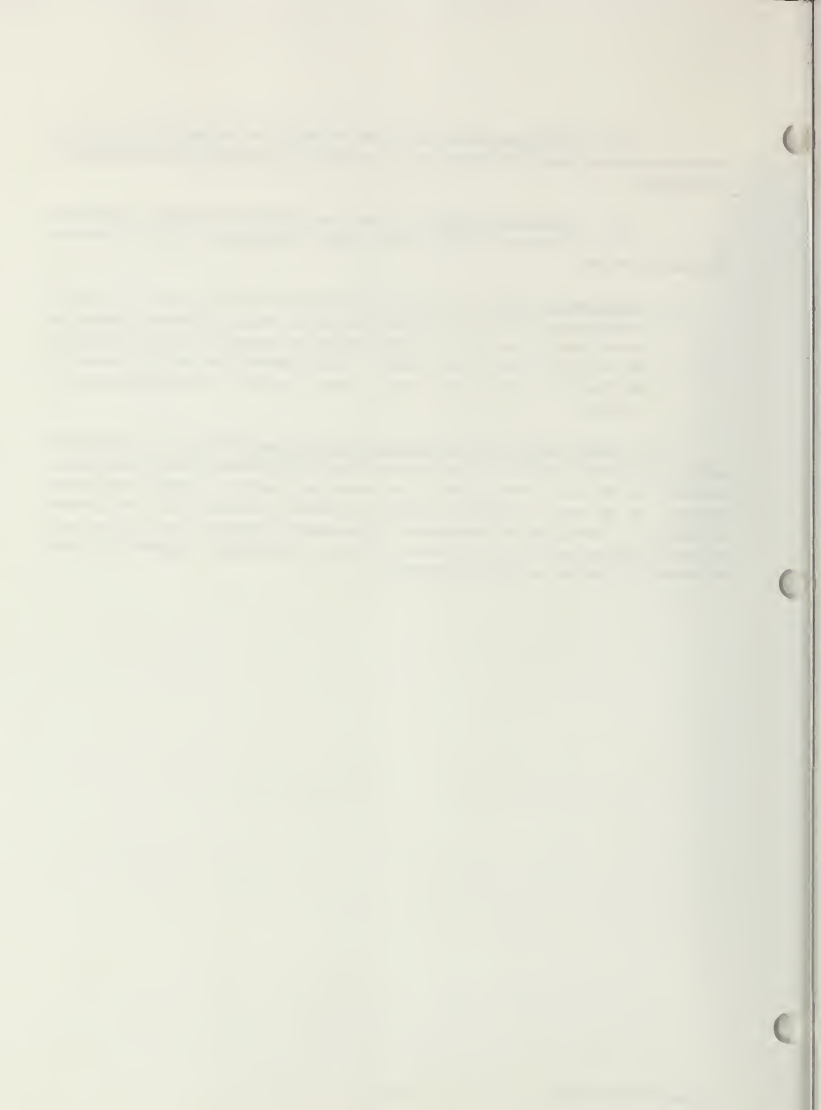
7. The seventh part of the report deals with the foreign relations of the country. It is a very detailed and thorough treatment of the subject, and it is a good starting point for a more detailed study.

(e) Exculpatory clause. The Contractor and its subcontractors hereby forever waive and release any and all claims against the Authority for Losses arising under or related to this Section 1.

(f) California law applies. California law, including the California Arbitration Act, Code of Civil Procedure §§1280 through 1294.2, shall govern all the Enforcement Procedure proceedings.

(g) Designation of agent for service. Not later than five (5) days after the execution of this Agreement, the Contractor shall designate a person or business, residing or located in the City and County of San Francisco, as its agent for service of a Request and all notices provided for herein. If the Contractor has an office located in San Francisco, it may designate itself as agent for service. The designation shall be served on

**1.10. Relationship to Other Employment Agreements.** Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce-training agreements or interfere with consent decrees, collective bargaining agreements or existing employment contracts. In the case of collective bargaining agreements, Contractor will take primary responsibility for integrating the requirements of Contractor's Workforce Goals with any such collective bargaining agreements. As necessary, Contractor will attempt to negotiate equivalent first source hiring obligations with relevant unions.



## APPENDIX B BUDGET

For an amount not to exceed \$58,865.75 per month month, or \$706,389 per year  
Contractor will provide the following:

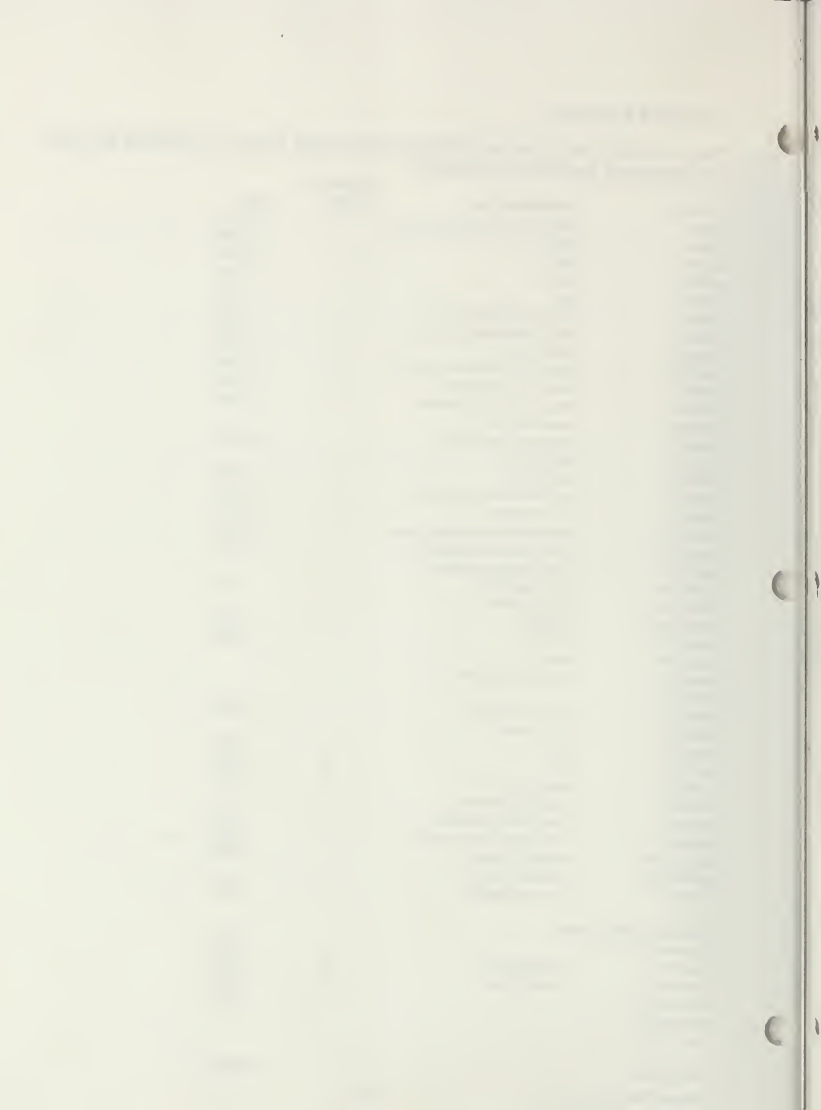
PARCEL	DESCRIPTION	SERVICE LEVEL	FY03
parcel 1	bldg 1, tourist stop,causeway	1	33,858
parcel 1A	bldg 180	1	8,256
parcel 2	bldg 2	1	20,967
parcel 3	bldg 3	1	8,636
parcel 4	pier 1	3	1,422
parcel 5	calif between m&l	2	4,748
parcel 6	picnic area tennis courts	3	8,562
parcel 6A	baseball field	3	3,025
parcel 6B	bldg 233 lift station surrounds	3	4,007
parcel 7	bldg 92 & surrounds	3	19,678
parcel 8	bldgs 99, 29, & surrounds	3	14,556
parcel 9	demolition site		
parcel 10	legal bldg & surrounds	2	20,430
parcel 11	Job Corps		
parcel 12	post office	3	5,610
parcel 13	dog park site/playing fields	1	53,522
parcel 14	star barracks	2	30,179
parcel 15	great lawn casa chapel library	1	128,063
parcel 16	nimitz conference center	2	19,876
parcel 17	TIHDI childcare center		
parcel 18	navy exchange	3	1,867
parcel 18A	CEC laydown		
parcel 18B	bldg 257	3	5,006
parcel 19	old brig	3	9,006
parcel 19A	field		
parcel 20	elementary school		
parcel 21			
parcel 21A	gym & surrounds		18,440
parcel 22	fire school		
parcel 23	puc	3	4,787
parcel 24	brig	1	8,972
parcel 25	gas station	3	2,216
parcel 26	sewage treatment		
parcel 27	area near Austin Hall	1	1,995
parcel 27A	Austin Hall & surrounds	3	2,099
parcel 28A	housing ir sites		12,878
parcel 28B	housing ir sites		
parcel 29	auto hobby shop	3	2,867

### YERBA BUENA ISLAND

Captains Park		1	8,203
quarters 1	Nimitz House	2	6,606
quarters 2-7	great whites	2	17,001
quarters 61		1	3,324
quarters 62			
quarters 240			

### SUBTOTAL

490,648

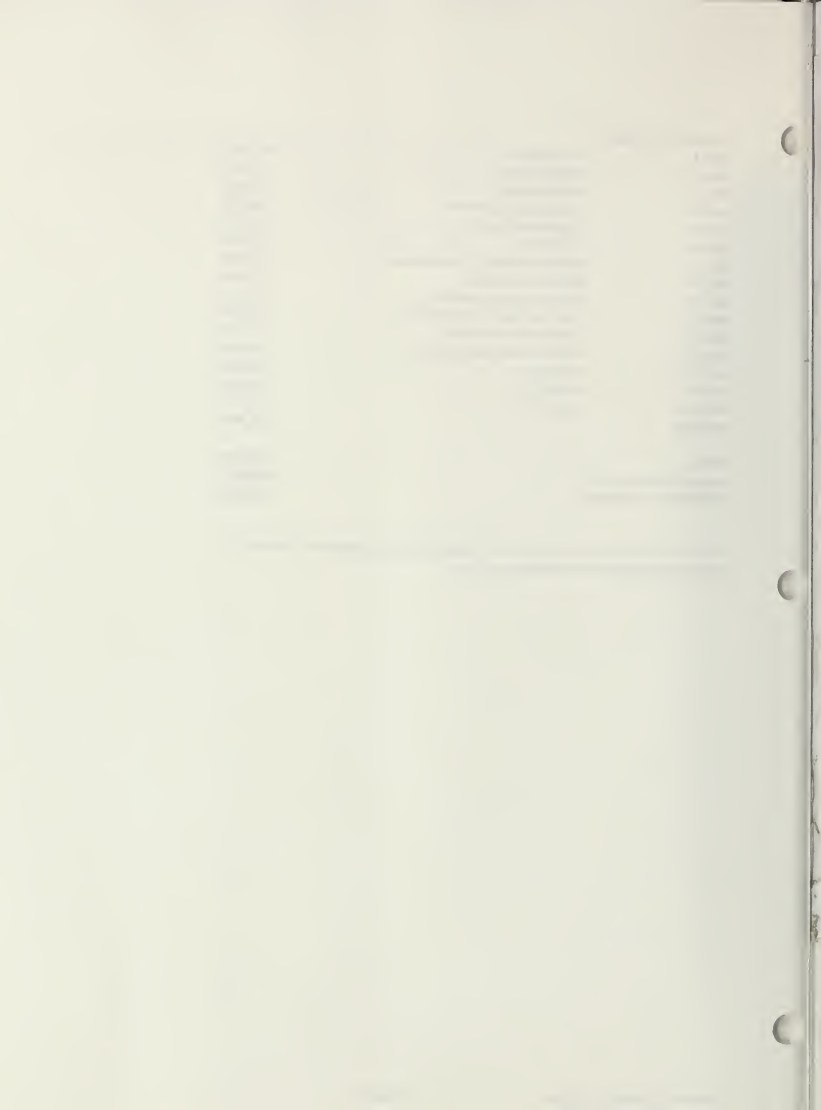


**Adjunct Work Items**

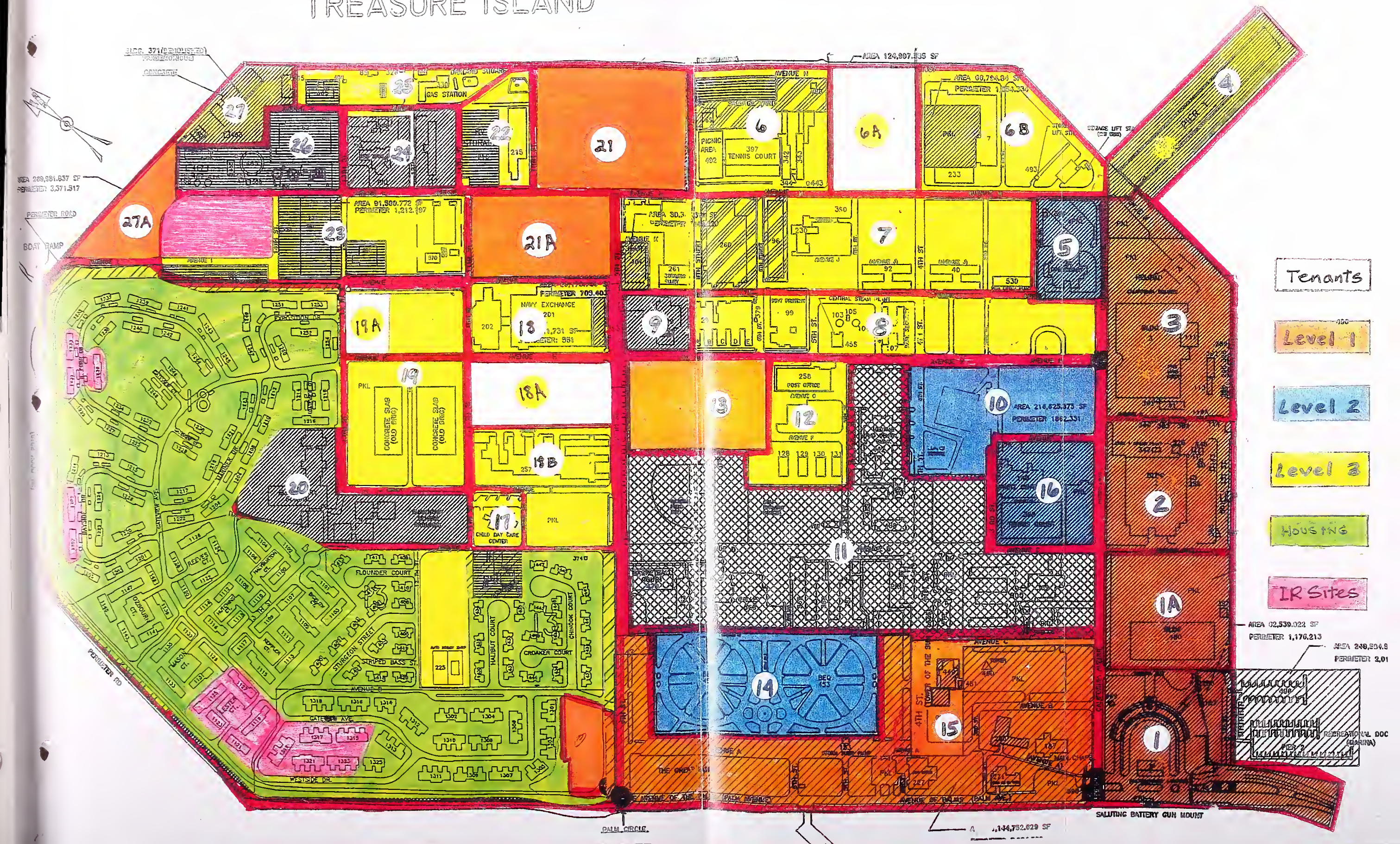
item 1	fire breaks	41,149
item 2	outer seawall	12,140
item 3	inner seawall	7,332
item 4	garbage & tourist stop	14,824
item 5	T1 garbage cans	12,337
item 6	poison oak	1,467
item 7	annual planting & maintenance	22,560
item 8	diseases & insects	1,838
item 9	storm damage clean-up	29,402
item 10	inventory housing (parcel 28)	12,878
item 11	reservoir maintenance	18,339
item 12	pump station maintenance	4,814
item 13	parcel 21	12,409
item 14	parcel 21A	18,840
item 15	parcel 27A	5,412
<b>Subtotal</b>		<b>215,741</b>

<b>TOTAL</b>	<b>706,389</b>
<b>Additional Services</b>	<b>243,611</b>
<b>CONTRACT MAXIMUM</b>	<b>950,000</b>

Written authorization is required to expend funds allocated for additional landscape services and playground rehabilitation services.











- Level 1
- Level 2
- Level 3
- J.S.Co



Notes \_\_\_\_\_

**AGENDA ITEM**  
**Treasure Island Development Authority**  
**City and County of San Francisco**

**Subject:** Resolution Authorizing the Executive Director to  
Execute an Amendment to the Child Care Master  
Lease with United States Navy to Incorporate Land  
Use Controls Associated with Use of the Property

**Agenda Items No. 10 + 11**  
**Meeting of April 9, 2003**

Resolution Authorizing the Executive Director to  
Execute an Amendment to the Child Care Center  
Sublease with Kidango to Incorporate Land Use  
Controls Related to Use of the Property

**Contact/Phone:** Stephen Proud, Deputy Executive Director  
415-274-0342

**SUMMARY OF PROPOSED ACTION:**

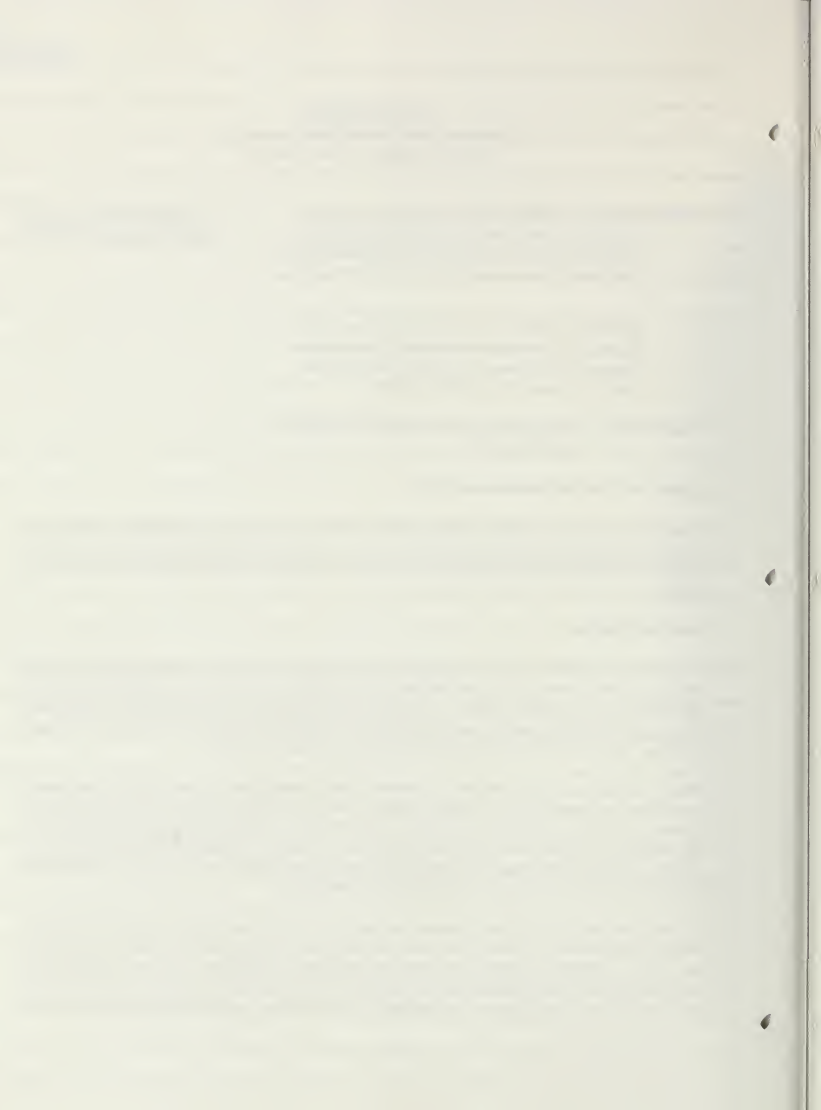
These two resolutions authorize the Executive Director to execute an amendment to both the Master Lease with the United States Navy and the Sublease with Kidango for the Childcare Center on Treasure Island (Building 502) to incorporate land use controls related to the use of the facility.

**BACKGROUND**

On October 17, 2001, the Authority authorized the Executive Director to execute a Master Lease with the United States Navy and Sublease with Kidango for use of the Child Care Center (Building 502) on Treasure Island. The Center is located adjacent to the elementary school near the center of the Island and serves approximately 12 infants, 16 toddlers and 64 preschool age children. The Center officially opened for business on March 24, 2003.

Prior to the Center opening, the Navy conducted field investigations as part of its environmental remediation program in the 11<sup>th</sup> Street corridor immediately adjacent to the Child Care Center. The results of the initial field investigation led the Navy to conduct additional investigations in the corridor and within the Child Care Center and to conduct a removal action at the site. In addition, the Navy took steps to implement a protective cap within the boundaries of the Child Care Center to address two areas of subsurface contamination.

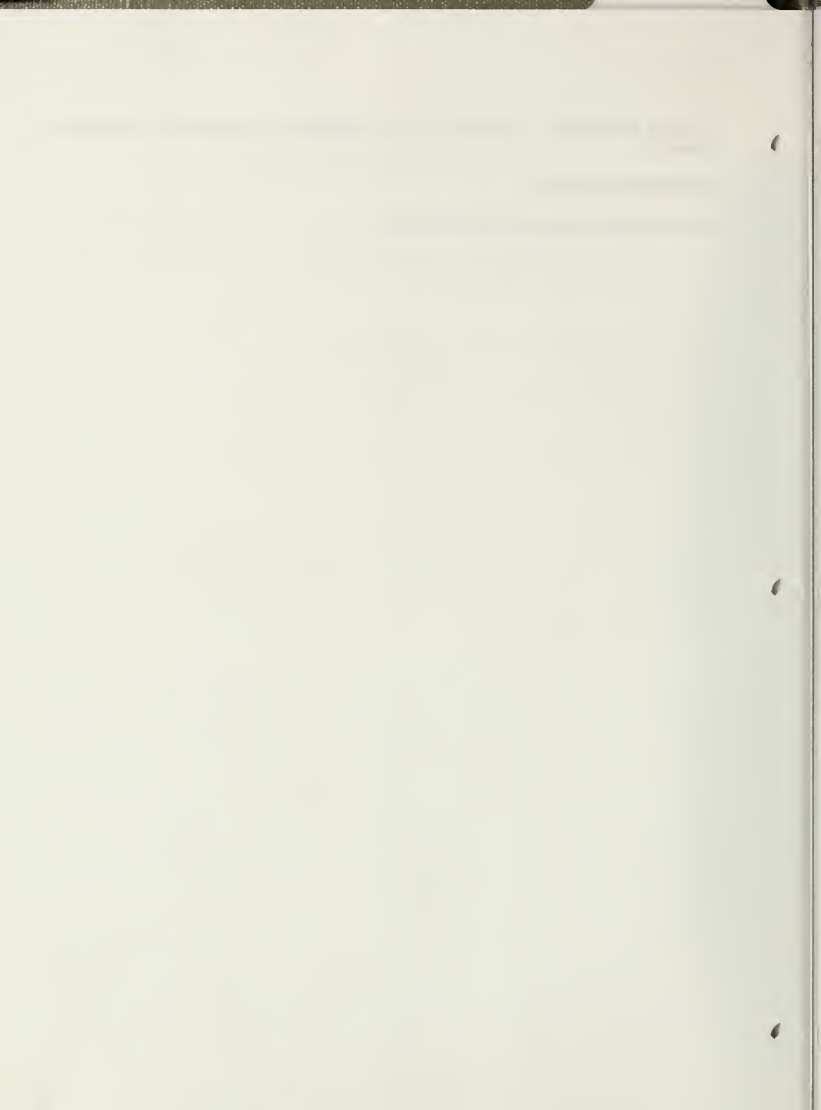
To insure the safety of children, workers, and utility workers from any activities that may occur at the site which would involve disturbance of subsurface soil or groundwater, the Navy prepared and issued a Health and Safety Plan that was distributed to Kidango. The resolutions under consideration would incorporate land use controls set forth in the Health and Safety Plan into both the Master Lease between the Authority and the Navy, and the Sublease between the



Authority and Kidango. A summary of the use restrictions is attached to the resolutions as Exhibit A.

### **RECOMMENDATION**

Staff recommends approval of both resolutions.





1 [Amendment to Master Lease for the Childcare Center]

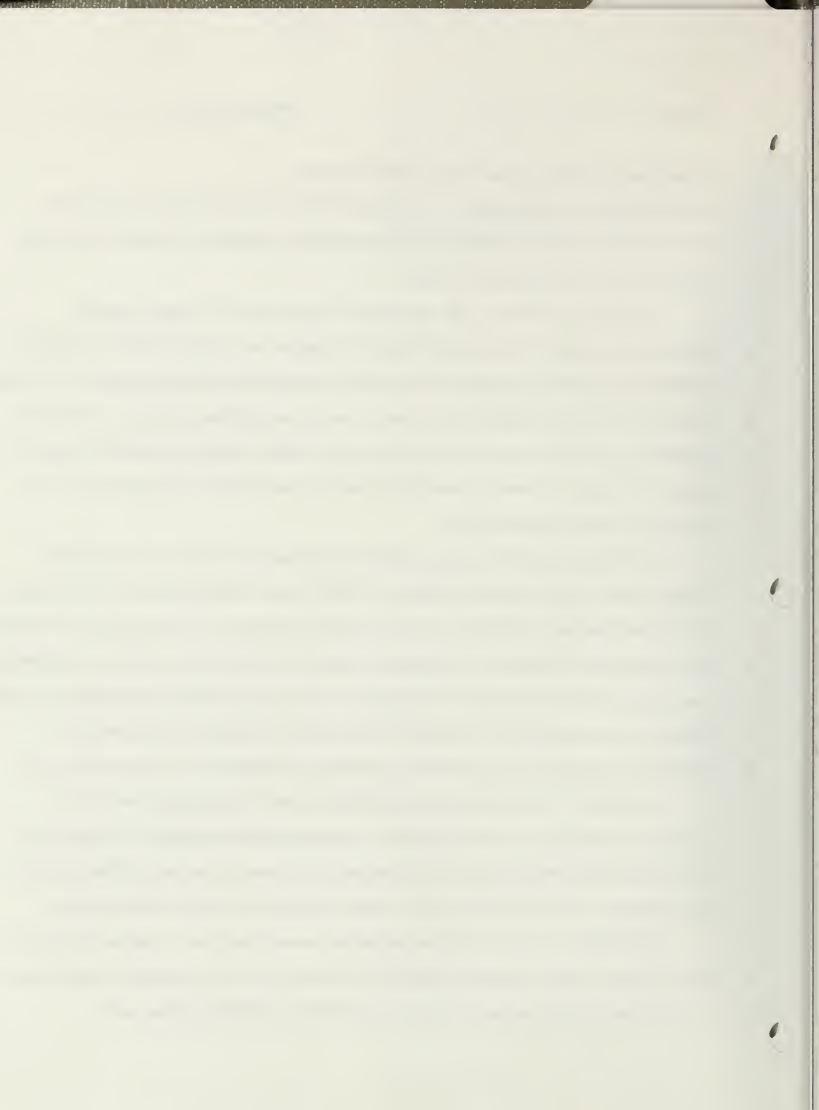
2 AUTHORIZING AN AMENDMENT TO THE MASTER LEASE BETWEEN THE UNITED  
3 STATES NAVY AND THE TREASURE ISLAND DEVELOPMENT AUTHORITY FOR THE  
4 CHILDCARE CENTER (BUILDING 502).

5 WHEREAS, On May 2, 1997, the Board of Supervisors (the "Board") passed  
6 Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a  
7 nonprofit public benefit corporation known as the Treasure Island Development Authority (the  
8 "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction,  
9 rehabilitation, reuse and conversion of former Naval Station Treasure Island (the "Base") for  
10 the public interest, convenience, welfare and common benefit of the inhabitants of the City  
11 and County of San Francisco; and,

12 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended  
13 Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter  
14 1333 of the Statutes of 1968 (the "Act"), the California legislature (i) designated the Authority  
15 as a redevelopment agency under California redevelopment law with authority over the Base  
16 upon approval of the City's Board of Supervisors, and, (ii) with respect to those portions of the  
17 Base which are subject to the Tidelands Trust, vested in the Authority the authority to  
18 administer the public trust for commerce, navigation and fisheries as to such property; and,

19 WHEREAS, The Tidelands Trust prohibits the sale of trust property into private  
20 ownership, generally requires that Tidelands Trust property be accessible to the public and  
21 encourages public-oriented uses of trust property that, among other things, attract people to  
22 the waterfront, promote public recreation, protect habitat and preserve open space; and

23 WHEREAS, In order to facilitate productive reuse of the Base, it may be beneficial for  
24 the Authority to lease or license property from the Navy and, in turn, sublease or sublicense  
25 such property to third-parties or use such property for municipal purposes; and



WHEREAS, On October 17, 2001, the Authority authorized the Executive Director to execute a Master Lease for the Childcare Center with the U.S. Navy for Building 502 and the adjacent parking lot (the "Premises") totaling approximately 3.11 acres; and

WHEREAS, an amendment to the Master Lease is required to incorporate land use controls provided by the United States Navy related to the use of the Child Care Center as set forth in Exhibit A; and

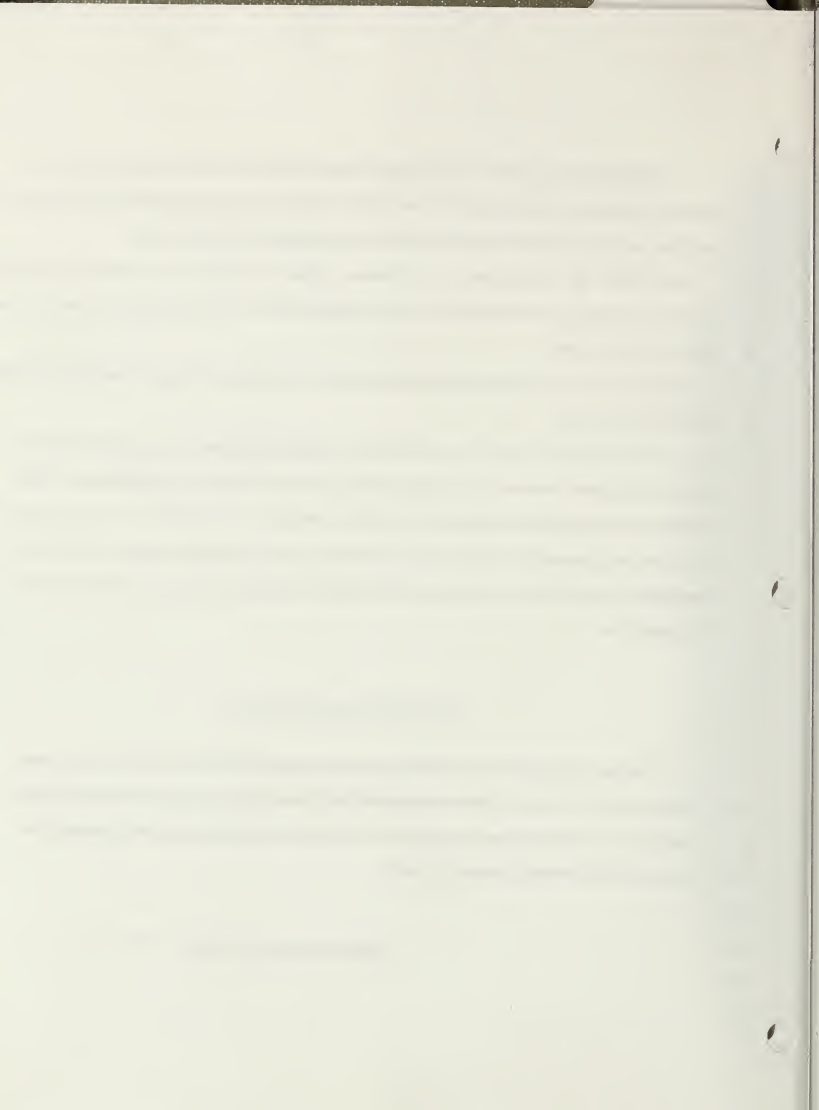
WHEREAS, the proposed amendments represent a material change to the Master Lease;  
now, therefore, be it

RESOLVED, That the Board of Directors hereby authorizes the Executive Director to amend the Master Lease with the United States Navy and to enter into modifications to the Childcare Center Master Lease (including, without limitation, the attachment of exhibits) that are in the best interests of the Authority and the City, do not materially change the terms of the Master Lease, and are necessary and advisable to effectuate the purpose and intent of this resolution.

### CERTIFICATE OF SECRETARY

*I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at a properly noticed meeting on April 9, 2003.*

**William Fazande, Secretary**





Notes

1 [Amendment to Sublease for Childcare Center]

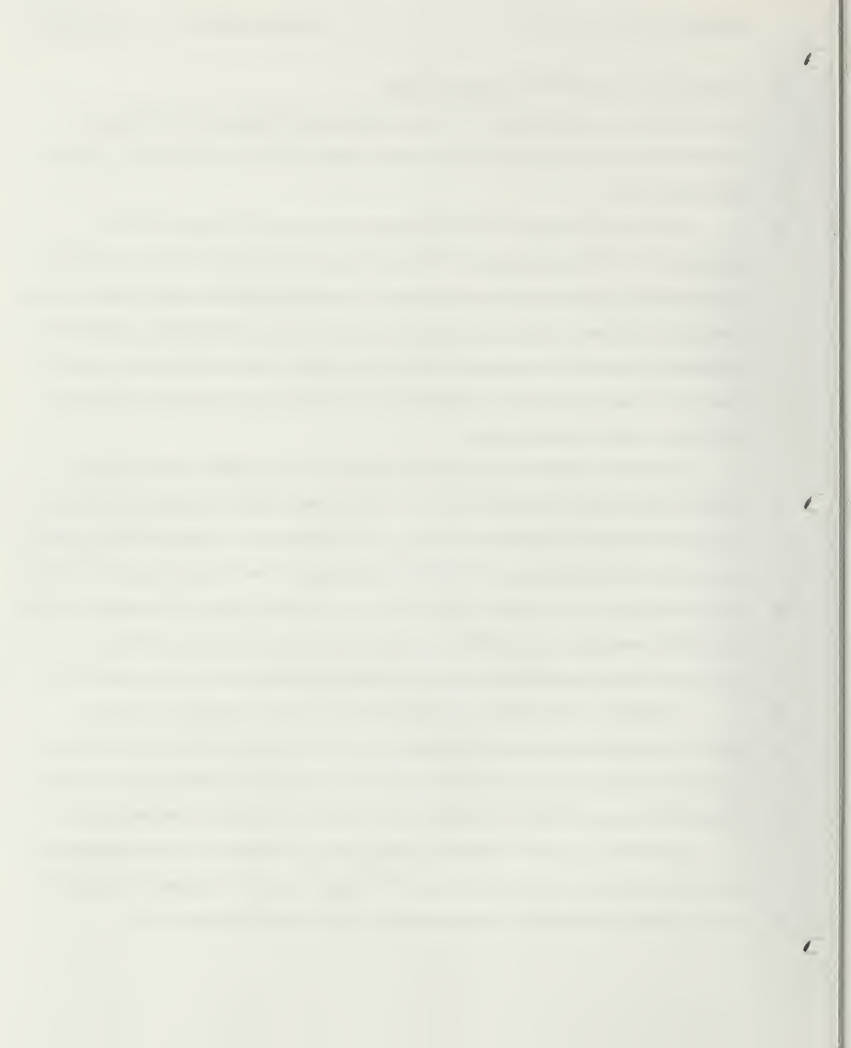
2 AUTHORIZING AN AMENDMENT TO THE SUBLEASE BETWEEN THE TREASURE  
3 ISLAND DEVELOPMENT AUTHORITY AND KIDANGO FOR THE CHILDCARE CENTER  
4 (BUILDING 502).

5 WHEREAS, On May 2, 1997, the Board of Supervisors (the "Board") passed  
6 Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a  
7 nonprofit public benefit corporation known as the Treasure Island Development Authority (the  
8 "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction,  
9 rehabilitation, reuse and conversion of former Naval Station Treasure Island (the "Base") for  
10 the public interest, convenience, welfare and common benefit of the inhabitants of the City  
11 and County of San Francisco; and,

12 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended  
13 Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter  
14 1333 of the Statutes of 1968 (the "Act"), the California legislature (i) designated the Authority  
15 as a redevelopment agency under California redevelopment law with authority over the Base  
16 upon approval of the City's Board of Supervisors, and, (ii) with respect to those portions of the  
17 Base which are subject to the Tidelands Trust, vested in the Authority the authority to  
18 administer the public trust for commerce, navigation and fisheries as to such property; and,

19 WHEREAS, The Tidelands Trust prohibits the sale of trust property into private  
20 ownership, generally requires that Tidelands Trust property be accessible to the public and  
21 encourages public-oriented uses of trust property that, among other things, attract people to  
22 the waterfront, promote public recreation, protect habitat and preserve open space; and

23 WHEREAS, In order to facilitate productive reuse of the Base, it may be beneficial for  
24 the Authority to lease or license property from the Navy and, in turn, sublease or sublicense  
25 such property to third-parties or use such property for municipal purposes; and





1 WHEREAS, The Authority has approved the Childcare Center Lease with the U.S.  
2 Navy for Building 502 and the adjacent parking lot (the "Premises") totaling approximately  
3 3.11 acres; and

4 WHEREAS, Under the provisions of the homeless assistance agreement the Treasure  
5 Island Homeless Development Initiative (TIHDI) may request a sublease from the Authority for  
6 use of the Premises; and,

7 WHERAS, On October 17, 2001, the Authority authorized the Executive Director to  
8 execute a sublease for the Childcare Center with the Tri Cities Children's Center; and

9 WHEREAS, the Sublease between Tri Cities Children's Center and the Authority was  
10 executed on December 1, 2001; and

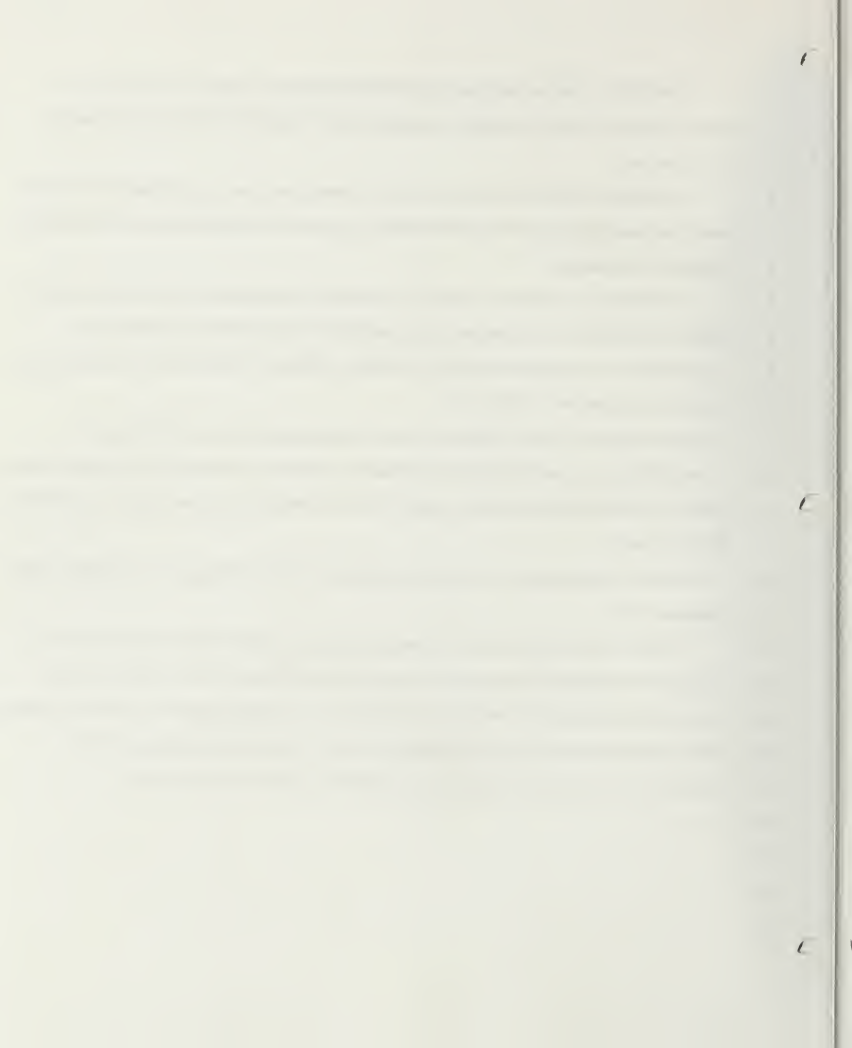
11 WHEREAS, the Tri Cities Children's Center has changed its name to Kidango; and,

12 WHEREAS, an amendment to the sublease is required to incorporate land use controls  
13 provided by the United States Navy related to the use of the Child Care Center as set forth in  
14 Exhibit A; and

15 WHERAS, the proposed amendments represent a material change to the Sublease; now,  
16 therefore, be it

17 RESOLVED, That the Board of Directors hereby authorizes the Executive Director to  
18 amend the Sublease with Kidango and to enter into modifications to the Childcare Center  
19 Sublease (including, without limitation, the attachment of exhibits) that are in the best interests  
20 of the Authority and the City, do not materially change the terms of the Lease, and are  
21 necessary and advisable to effectuate the purpose and intent of this resolution.

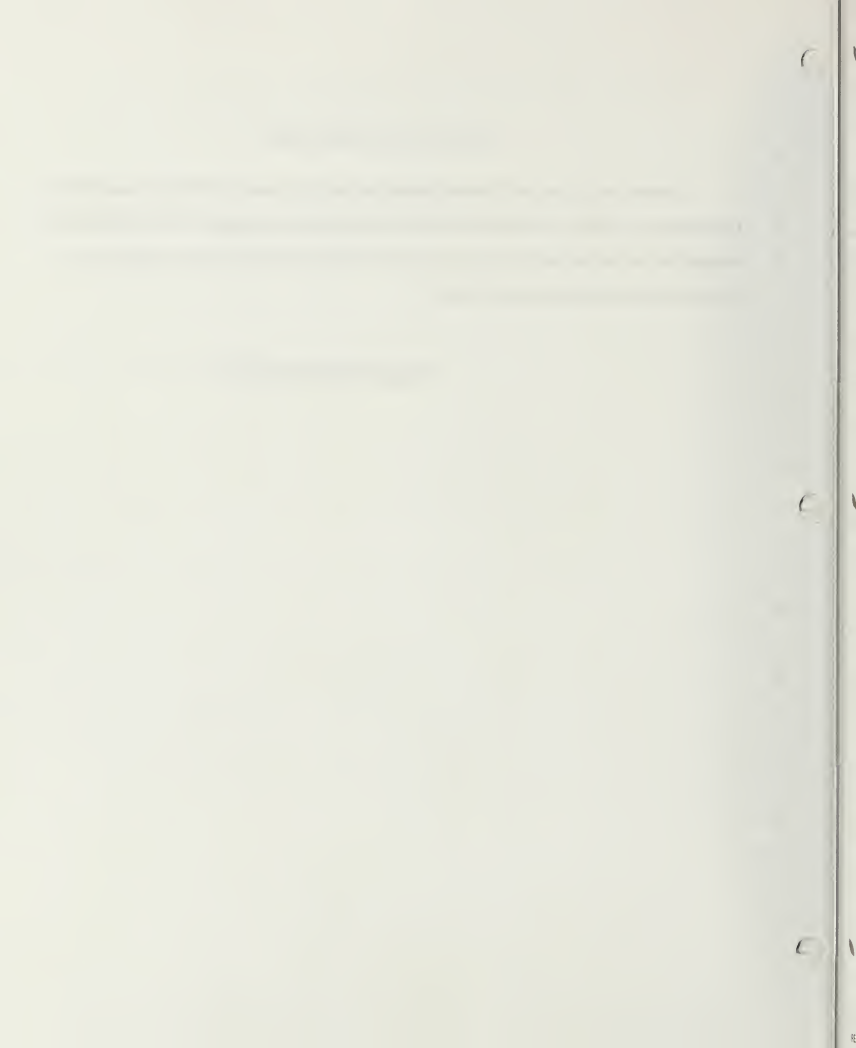
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1  
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3 CERTIFICATE OF SECRETARY

4 *I hereby certify that I am the duly elected and acting Secretary of the Treasure Island*  
5 *Development Authority, a California nonprofit public benefit corporation, and that the above*  
6 *Resolution was duly adopted and approved by the Board of Directors of the Authority at a*  
7 *properly noticed meeting on April 9, 2003.*

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10 \_\_\_\_\_  
11 William Fazande, Secretary  
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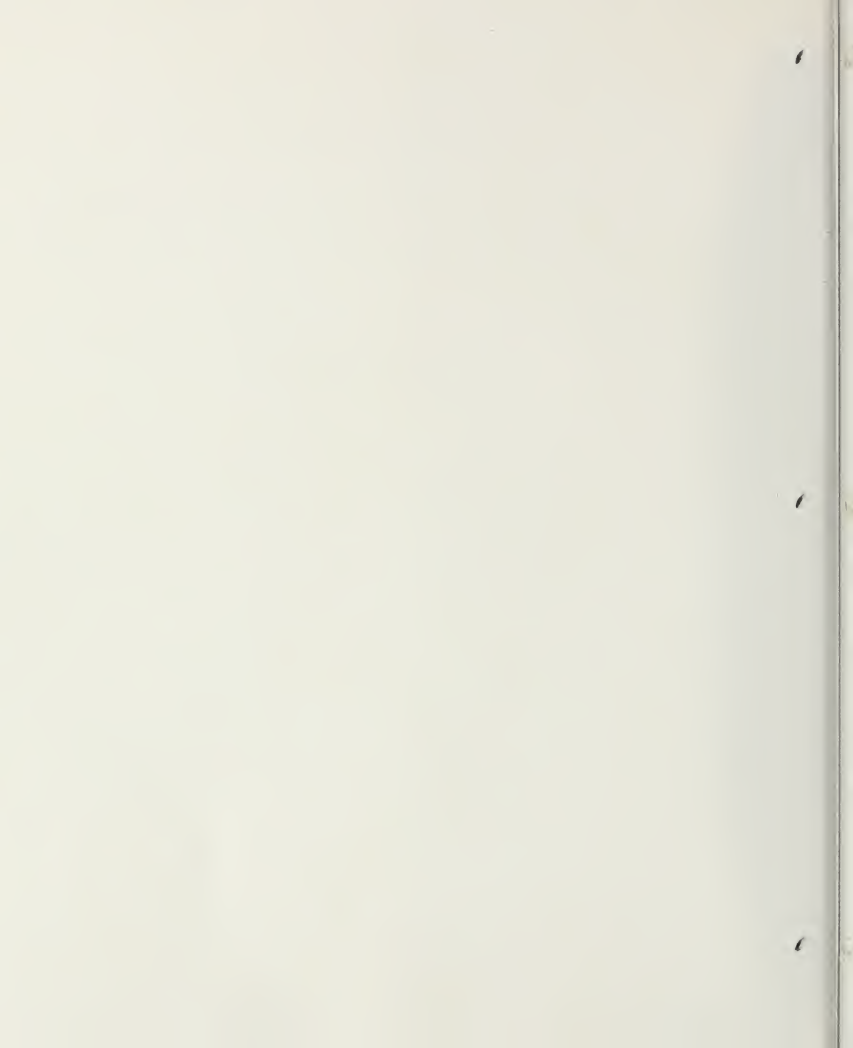


EXHIBIT A  
SUMMARY OF USE RESTRICTION FOR CHILD CARE CENTER

- Lessee shall not conduct or permit its Sublessees to conduct any subsurface excavation, digging, drilling, or other soil disturbance of the surface, including, but not limited to, ornamental gardening and the raising of produce for consumption, without the prior written approval of Government.
- Use of groundwater is prohibited. The Lessee will be prohibited from installing any groundwater wells or otherwise using groundwater at the subject property.
- Lessee shall be restricted from all groundbreaking activities, including ornamental gardening and the raising of produce for consumption. Existing landscaping can be maintained by mowing, clipping and pruning, but may not include any groundbreaking such as the addition or removal of trees, shrubs, plants, or grasses. The Lessee shall conduct a quarterly inspection to ensure that ground-disturbing and groundbreaking activities do not occur.
- The Lessee will be required through the lease to comply with all applicable laws and regulations pertaining to the use, treatment, storage, disposal and transportation of hazardous materials.
- The Lessee shall not interfere with the ongoing Installation Restoration and other environmental program activities. The Lessee will be prohibited from damaging any existing or future groundwater monitoring wells and will be responsible for repairing any damage done to the wells.
- All non-emergency utilities work at the Building 502 facility and adjacent streets shall require a Dig Permit, that includes the signature of the Navy Caretaker Site Office, prior to start of any ground-disturbing activities.

In areas of the site where there is no known soil contamination, soil from permitted utilities work shall still be managed for proper handling and disposal during the ongoing CERCLA process at the site. During the course of permitted utilities work, if unexpected subsurface conditions are encountered that include the presence of debris, staining or odor, the permitted work shall cease immediately, and the permit will be re-evaluated.

In the areas of the site beneath the concrete cap and Building 502, where soil contamination has been identified, a work plan that includes protective measures, soil sampling and soil management as determined appropriate, shall be a part of the approved permit. The purposes of the work plan will be:

THE UNIVERSITY OF CHICAGO  
DEPARTMENT OF CHEMISTRY  
530 CHICAGO  
CHICAGO, ILL. 60637

TO THE DIRECTOR  
OF THE NATIONAL BUREAU OF STANDARDS  
WASHINGTON, D. C. 20535

RE: [Illegible text]

DATE: [Illegible text]

REFERENCE: [Illegible text]

REMARKS: [Illegible text]

TEST RESULTS: [Illegible text]

CONCLUSIONS: [Illegible text]

RECOMMENDATIONS: [Illegible text]



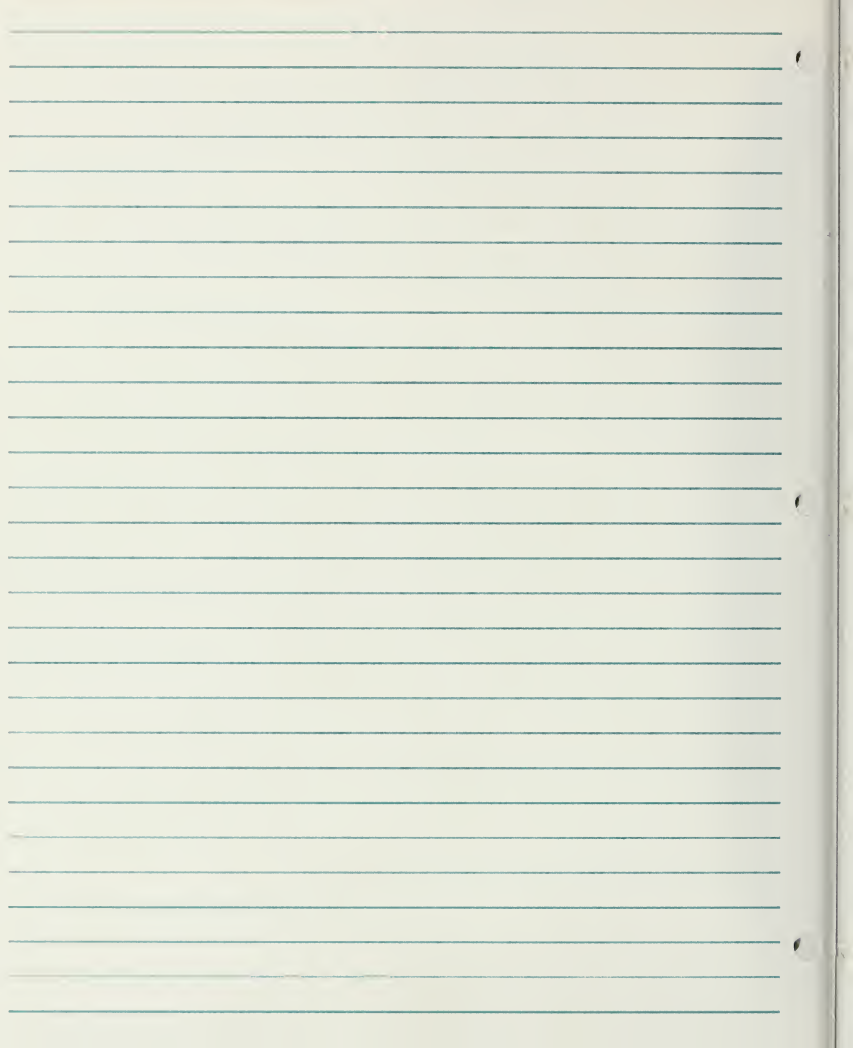
- 1) to ensure that soil excavated from contaminated areas is completely contained by use of ground covers, soil pile covers, runoff control, and care in excavation methods, pending determination of the level of contamination;
- 2) to ensure that soil is properly characterized by sampling and analysis to determine proper disposition;
- 3) to ensure that children and staff at the child care facility are not inadvertently exposed to inappropriate risk from hazardous constituents, by such means as project day and time scheduling, temporary relocation, or appropriate physical barriers; and
- 4) to ensure that personal protective equipment is used consistent with the likely concentrations of hazardous constituents and exposure duration.

For emergency utilities work, the lessee shall contact the Navy Caretaker Site Office for authorization. In the event that the Navy Caretaker Site Office cannot be reached, the lessee's officer responsible for worker health and safety shall make an appropriate determination on protective measures to address health and safety to workers due to potentially contaminated soils, and all soil excavated shall be stockpiled in a secure area for further determination of handling. No soil will be returned to the excavation as a result of emergency utilities work until authorized by the Navy.

- The Lessee will be responsible for obtaining all necessary permits and licenses for their own operation. Any violation of the permit conditions will be grounds to require the Lessee to cease operations or terminate the lease.
- The Lessee shall ensure that operators of the Building 502 facility, including maintenance and landscape personnel, are aware of and familiar with these restrictions.







**AGENDA ITEM**  
**Treasure Island Development Authority**  
**City and County of San Francisco**

**Subject:** Resolution Authorizing the Executive Director to  
Execute an Amendment to the Sublease with  
Rex Liu for the Photo Booth to  
Extend the Term of the Month-to-Month  
Sublease an Additional 12 Months

**Agenda Item No. 12**  
**Meeting of April 9, 2003**

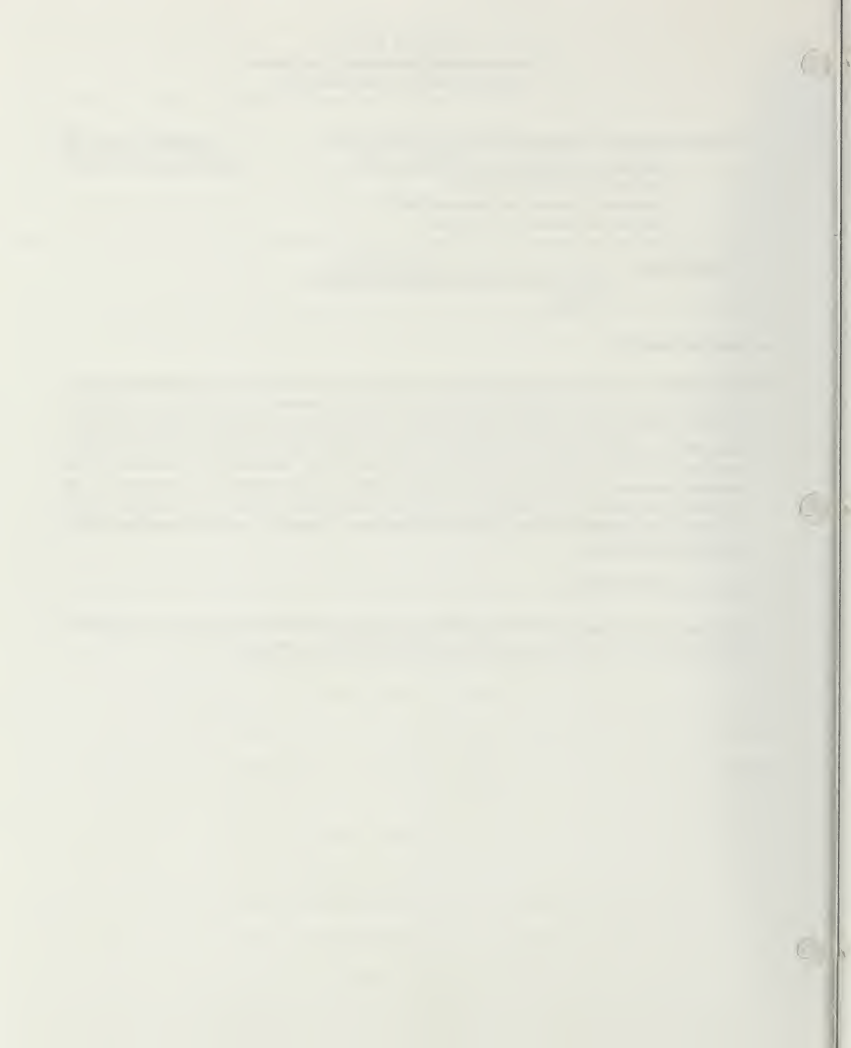
**Contact/Phone:** Annemarie Conroy, Executive Director  
Stephen Proud, Deputy Executive Director  
274-0660

**BACKGROUND**

On October 15, 1999, the Executive Director entered into a month-to month sublease with Mr. Liu for the use of the Photo Booth (located near the front entrance to the Island) as a retail shop for film, cameras, picture taking, and souvenirs. Monthly rent for the facility was set at \$500.00. On April 12, 2000, April 11, 2001, and April 10, 2002, the Authority approved separate resolutions, each extending the term of the sublease for an additional twelve months. The sublease is currently due to expire on April 15, 2003. If the resolution is approved by the Authority, the sublease will continue on a month-to-month basis for one year, expiring on April 15, 2003. Any additional amendments to the sublease to extend the term will be subject to the Authority's approval.

**RECOMMENDATION**

Staff recommends approval of the resolution authorizing the Executive Director to continue the sublease with Mr. Rex Liu on a month-to-month basis for up to one year.



1 [Continuation of Month-to-Month Sublease for the Photo Booth]

2 **AUTHORIZING THE EXECUTIVE DIRECTOR TO CONTINUE THE**  
3 **SUBLEASE WITH MR. REX LIU ON A MONTH-TO-MONTH BASIS UP TO ONE YEAR**  
4 **FOR THE USE AND OPERATION OF THE PHOTO BOOTH ON TREASURE ISLAND**

5 WHEREAS, former Naval Station Treasure Island is a military base located on Treasure Island  
6 and Yerba Buena Island (together, the "Base"), which is currently owned by the United States of  
7 America ("the Federal Government"); and,

8 WHEREAS, the Base was selected for closure and disposition by the Base Realignment and  
9 Closure Commission in 1993, acting under Public Law 101-510, and its subsequent amendments; and,

10 WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97,  
11 authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit  
12 corporation known as the Treasure Island Development Authority (the "Authority") to act as a single  
13 entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of  
14 the Base for the public interest, convenience, welfare and common benefit of the inhabitants of the City  
and County of San Francisco; and,

15 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended Section  
16 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes  
17 of 1968 (the "Act"), the California Legislature (i) designated the Authority as a redevelopment agency  
18 under the California Redevelopment Law with authority over the Base upon approval of the City's  
19 Board of Supervisors, and (ii) with respect to those portions of the Base which are subject to Tidelands  
20 Trust, vested in the Authority the authority to administer the public trust for commerce, navigation and  
fisheries as to such property; and

21 WHEREAS, The Tidelands Trust prohibits the sale of trust property into private ownership,  
22 generally requires that Tidelands Trust property be accessible to the public and encourages public-  
23 oriented uses of Tidelands Trust property that, among other things, attract people to the waterfront,  
promote public recreation, protect habitat and preserve open space; and

24 WHEREAS, According to the Sections 10 and 12 of the Authority's Rules and Procedures for  
25 Transfer of Real Property, adopted March 11, 1998, the Executive Director may enter into month-to-





1 month or shorter term leases, licenses or subleases for a cumulative term of no more than six months  
2 without competitive bidding or the separate approval of the Authority; and

3 WHEREAS, the Photo Booth is an amenity to Treasure Island, tourists, and visitors; and

4 WHEREAS, On October 15, 1999, the Executive Director entered into a month-to-month  
5 sublease with Mr. Rex Liu for use of the Photo as a retail shop for film, camera, picture-taking, and  
6 souvenirs at \$500 per month as the base rent; and

7 WHEREAS, On April 12, 2000, April 11, 2001, and April 10, 2002 the Authority approved  
8 continuation of the sublease for an additional twelve months; and

9 WHEREAS, Mr. Liu wishes to continue to use the Photo Booth until April 15, 2004 for a retail  
10 shop; now therefore be it

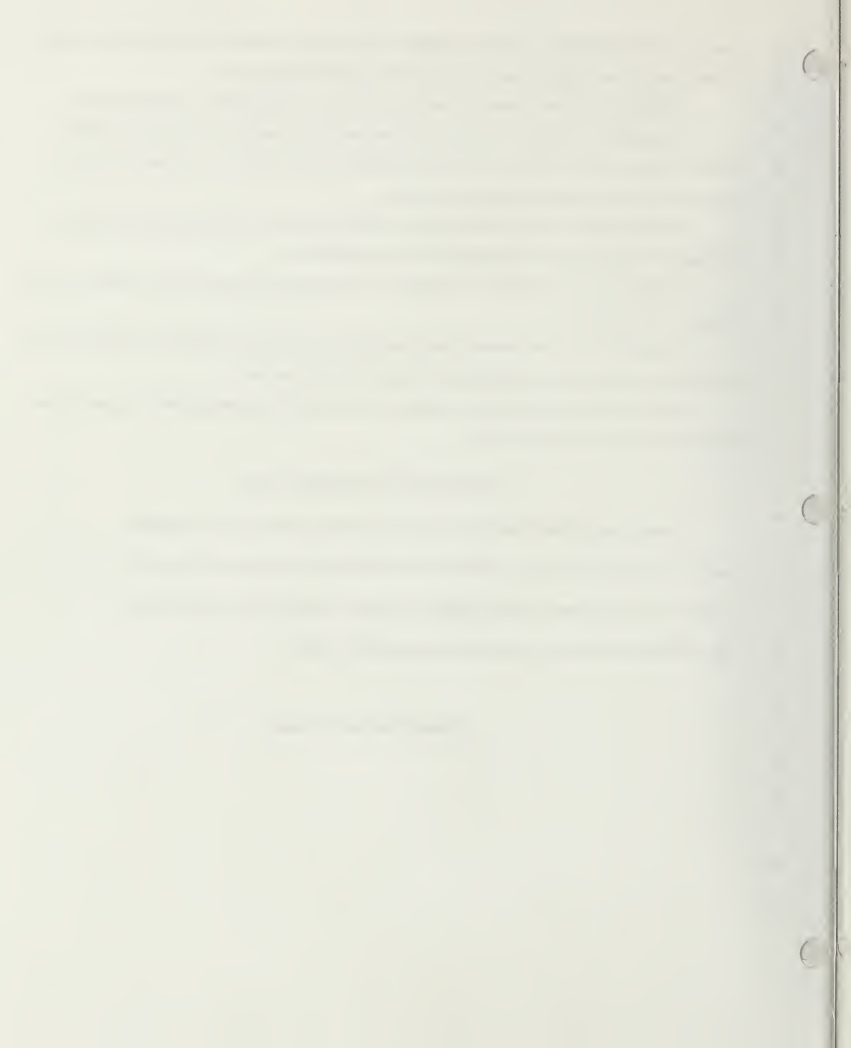
11 RESOLVED, That the Authority hereby authorizes the Executive Director to continue the term  
12 of the sublease on a month-to-month basis until April 15, 2004; and be it

13 FURTHER RESOLVED, That Authority approval shall be required to further extend the term  
14 of the sublease beyond April 15, 2004.

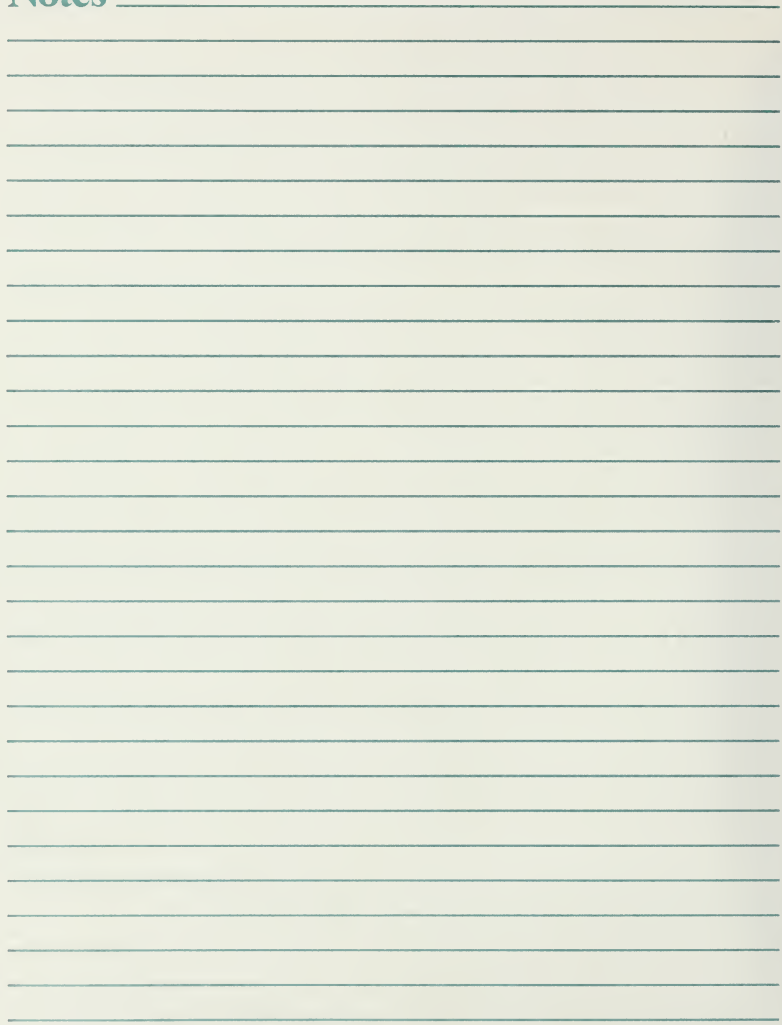
#### 15 CERTIFICATE OF SECRETARY

16 *I hereby certify that I am the duly elected and acting secretary of the Treasure*  
17 *Island Development Authority, a California nonprofit public benefit corporation, and*  
18 *that the above Resolution was duly adopted and approved by the Board of Directors of*  
19 *the Authority at the Properly noticed meeting on April 9, 2003.*

20 \_\_\_\_\_  
21 William Fazande, Secretary  
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**AGENDA ITEM**  
**Treasure Island Development Authority**  
**City and County of San Francisco**

**Subject:** Resolution Authorizing the Executive Director to  
Execute an Exclusive Negotiating Agreement with  
Treasure Island Community Development for the  
Redevelopment of Former Naval Station Treasure Island

**Agenda Item No. 13**  
**Meeting of April 9, 2003**

**Contact/Phone:** Annemarie Conroy, Executive Director  
Stephen Proud, Director of Development  
274-0660

**BACKGROUND**

On June 14, 2000, the Authority authorized the issuance of a Request for Qualifications for a Primary Developer ("Primary Developer RFQ") for former Naval Station Treasure Island. On October 27, 2000, staff issued approximately 500 copies of the Primary Developer RFQ to interested parties. Staff held a pre-submittal meeting on Treasure Island on December 5, 2000 to address questions from potential respondents regarding the RFQ process. Submittals for the RFQ were due to the Authority office on February 1, 2001. On that date, the Authority received two responses to the RFQ, which were distributed to the Authority Board members for review. The two responses were from Navillus Associates and Treasure Island Community Development ("TICD").

On July 11, 2001, staff presented the findings of an independent review of the two proposals that concluded that TICD met the evaluation criteria set forth in the RFQ and was thus qualified to proceed to the proposal stage, but that Navillus did not meet the evaluation criteria.

Given the low response rate to the RFQ, the Authority directed staff to conduct a brief study to assess the possible reasons for the lack of developer interest and make recommendations regarding how to proceed. On September 12, 2001, staff presented the findings of a report prepared by Bay Area Economics that concluded there are no 'quick fixes' the Authority can undertake to improve the development climate at Treasure Island. To avoid delay and to better assess whether proceeding with TICD's best achieves the Authority's goals, the Authority authorized staff to proceed with the original solicitation process by preparing a focused Request for Proposal ("RFP") for the Board's consideration.

On April 10, 2002, the Authority reviewed the focused RFP and authorized staff to issue the document to Treasure Island Community Development. The RFP was developed via an unprecedented public process that included numerous meetings with the Authority Board, members of the Treasure Island Citizens Advisory Board, and comments provided by organizations, individuals and government agencies. The focused RFP was issued to TICD on April 15, 2002.



On July 2, 2002, TICD submitted its initial response to the RFP to Authority staff (the "Draft Proposal"). Copies of the Draft Proposal were provided to the Authority Board, members of the Treasure Island Citizens Advisory Board, the San Francisco Board of Supervisors, and interested members of the public. TICD made presentations of the Draft Proposal at several public meetings held in San Francisco and on Treasure Island to solicit input from the public. In addition, the Treasure Island/Yerba Buena Island Citizen's Advisory Board (the "CAB") held 16 meetings to discuss the Draft Proposal and prepare comments that were forwarded to the Authority Board.

On January 2, 2003, TICD submitted its revised proposal for the Authority's consideration. Copies were sent to the Authority Board and the members of the CAB for their review. The CAB and its subcommittees held several meetings to review the proposal and they provided their comments to the Board. The staff met both individually and collectively with a consultant team to evaluate the proposal in the context of the criteria set forth in the RFP and presented our analysis to the Authority Board.

Based on the analysis presented by staff, the Authority Board adopted a resolution at its regularly scheduled meeting on March 12, 2003 that states that TICD met the criteria set forth in the RFP and authorized the Executive Director to enter into exclusive negotiations with TICD for the redevelopment of former Naval Station Treasure Island, subject to the Board's separate approval of the exclusive negotiating agreement (ENA).

Staff has prepared the Exclusive Negotiation Agreement for execution with TICD, a copy of which is attached to the resolution for this agenda item. Significant elements of the ENA include:

- *Exclusive Negotiations.* The Authority's principal obligations under the ENA are to (i) negotiate in good faith with TICD, and (ii) during the term of the ENA, not negotiate with any entity other than TICD regarding the redevelopment of former Naval Station Treasure Island (excluding the marina).
- *Schedule of Performance.* A specific schedule of performance regarding the negotiation and preparation of the documents necessary to implement the redevelopment of Treasure Island. Among those milestones are a studies that address certain key issues identified in the RFP process that demand further consideration, a Term Sheet setting forth major terms and conditions governing redevelopment of the Base, and the preparation of the Development and Disposition Agreement and related transaction documents. The Authority can terminate the ENA early if TICD fails to meet any of the milestones.
- *Term.* The term of the ENA is 18 months. TICD may automatically extend the term for two (2) six-month periods and are required to pay a fee for each requested extension.





- *Transaction Costs.* Staff expects that most of the Authority's transaction costs will be paid by TIDA (out of revenues) and those funds will be recovered with an appropriate return as part of the final business transaction structure with TICD. To the extent additional funds are necessary to cover the Authority's transaction costs, TICD will be required to provide those funds to TIDA up to a cap of \$1.8 million (\$100,000 per month for the initial 18-month term).
- *Financial Guarantee.* The ENA includes a corporate financial guarantee to cover TICD's obligations under the ENA.
- *Obligations of the Parties.* The ENA outlines the obligations of TICD and the Authority and sets forth the items that will be the subject of negotiations during the term of the ENA and sets forth certain guidelines for seeking local, state and federal regulatory approvals.

## RECOMMENDATION

Staff recommends approval of the resolution.



1 [Authorizing Execution of Exclusive Negotiating Agreement]

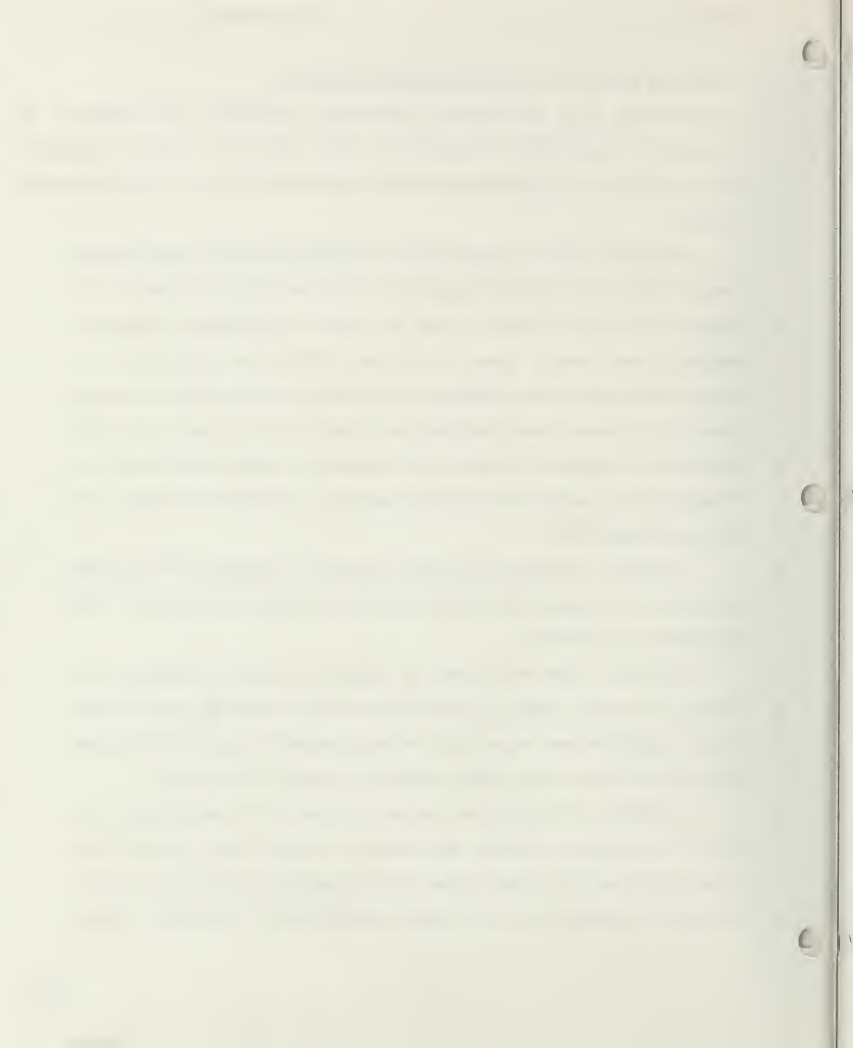
2 AUTHORIZING THE AUTHORITY'S EXECUTIVE DIRECTOR TO EXECUTE AN  
3 EXCLUSIVE NEGOTIATING AGREEMENT WITH TREASURE ISLAND COMMUNITY  
4 DEVELOPMENT FOR THE REDEVELOPMENT OF FORMER NAVAL STATION TREASURE  
5 ISLAND.

6 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended  
7 Section 33492.5 of the California Health and Safety Code and added Section 2.1 to  
8 Chapter 1333 of the Statutes of 1968 (the "Act"), the California Legislature (i)  
9 designated the Treasure Island Development Authority (the "Authority") as a  
10 redevelopment agency under California redevelopment law with authority over former  
11 Naval Station Treasure Island (the "Base"), and (ii) with respect to those portions of the  
12 Base which are subject to the public trust for commerce, navigation and fisheries (the  
13 "Tidelands Trust"), vested in the Authority the authority to administer the Tidelands Trust  
14 as to such property; and,

15 WHEREAS, The Board of Supervisors approved the designation of the Authority  
16 as a redevelopment agency with powers over Treasure Island in Resolution No. 43-98,  
17 dated February 6, 1998; and,

18 WHEREAS, Under the Act and the Authority's Articles of Incorporation and  
19 Bylaws, the Authority, acting by and through its Board of Directors has the power,  
20 subject to applicable laws, to sell, lease, exchange, transfer, convey or otherwise grant  
21 an interest in or right to use or occupy real property located on the Base; and,

22 WHEREAS, In 1994, a Citizen's Reuse Committee ("CRC"), representing a broad  
23 spectrum of community interests, was formed to: (i) review reuse planning efforts  
24 regarding the Base by the San Francisco Planning Department and the San Francisco  
25 Redevelopment Agency; and (ii) to make recommendations to the City's Planning



1 Commission and Board of Supervisors, and in July 1996, after an extensive community  
2 planning effort, a draft reuse plan for the Base (the "Reuse Plan") was unanimously  
3 endorsed by the Mayor, the Board of Supervisors, the Planning Commission and the  
4 CRC; and,

5 WHEREAS, The City forwarded the Reuse Plan to the Department of Defense in  
6 July 1996 to serve as the guiding document for the Navy and City in preparation of a  
7 joint Environmental Impact Statement/Environmental Impact Report (EIR/EIS) and the  
8 Reuse Plan serves as the basis for the Preliminary Redevelopment Plan for the Base;  
9 and,

10 WHEREAS, The conversion of the Base according to the goals and objectives of  
11 the Reuse Plan will require extensive coordination and large investments for new  
12 infrastructure and to address extraordinary transportation access and seismic  
13 constraints, all of which may best be achieved through the coordinated services of one  
14 "Primary Developer" of the Base; and,

15 WHEREAS, On June 14, 2000, the Authority authorized issuance of a Request  
16 For Qualifications for a Primary Developer of the Base ("RFQ"), and thereafter issued  
17 approximately 500 copies of the RFQ to interested parties and hosted a pre-submittal  
18 meeting regarding the RFQ that was attended by over 125 representatives of the  
19 development community; and,

20 WHEREAS, Submittals to the RFQ were due to the Authority by February 1,  
21 2001, and on that date the Authority received two responses to the RFQ, one from  
22 Navillus Associates and one from Treasure Island Community Development ("TICD");  
23 and,

24 WHEREAS, A team of expert consultants hired by the Authority, including Keyser  
25 Marston & Associates and Arthur Andersen, reviewed the materials submitted by the



1 two respondents to the RFQ, prepared supplemental information requests to address  
2 questions raised during the review process, and together with Authority staff and a  
3 designated member of the Treasure Island Community Advisory Board, conducted  
4 interviews of the two responding teams; and,

5 WHEREAS, On July 11, 2001, the Authority by resolution found, based on the  
6 consultants' analysis and the recommendations of staff, that TICD met each of the  
7 seven criteria set forth in the RFQ for proceeding on to the RFP phase; and,

8 WHEREAS, On July 11, 2001 in that same resolution, the Authority directed the  
9 Executive Director to (i) undertake a brief study to explore ways to improve competition  
10 for the opportunity, including by having a consultant interview prospective developers  
11 that expressed interest in Treasure Island but failed to respond to the RFQ, and (ii)  
12 based on the information gleaned from that study, to present options to the Authority for  
13 moving forward with the primary developer solicitation process; and,

14 WHEREAS, On September 11, 2001, staff and the Authority's consultant, Bay  
15 Area Economics, reported that simply presenting again to the development community  
16 a combined RFQ/RFP would not likely result in material new developer interest, and  
17 after considering the consultant's report and the recommendations of staff, the Authority  
18 indicated that to best achieve the goals of the Reuse Plan and avoid significantly  
19 delaying implementation of the Reuse Plan, the Authority should proceed with the  
20 original solicitation process set forth in the RFQ by issuing a focused Request For  
21 Proposals ("RFP") to TICD, and then evaluate the content of TICD's response to the  
22 focused RFP to determine whether the Authority should enter into exclusive  
23 negotiations with TICD regarding the implementation of its proposal; and,

24 WHEREAS, On April 10, 2002, after an unprecedented public process that  
25 included numerous meetings with the Authority Board, members of the Treasure





1 Island/Yerba Buena Island Citizens Advisory Board ("TI/YBI CAB"), and comments  
2 provided by organizations, individuals and government agencies, the Authority  
3 authorized staff to issue the focused RFP to TICD; and,

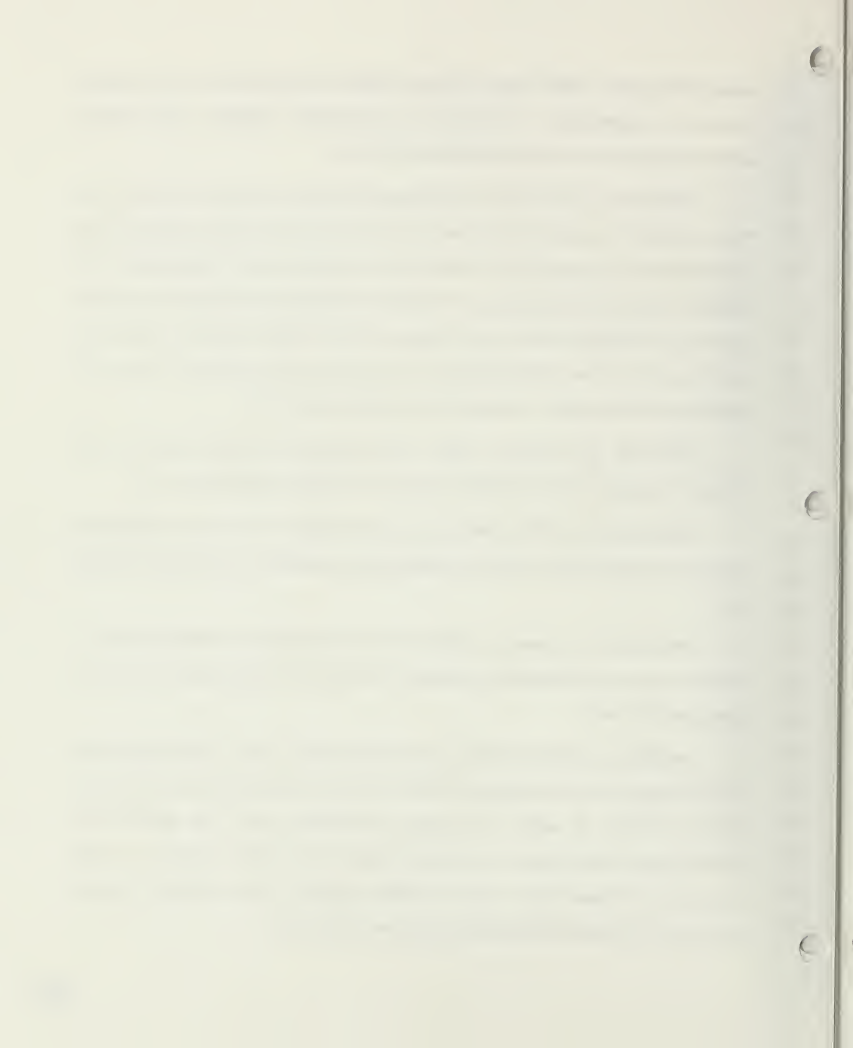
4 WHEREAS, On July 2, 2002, TICD submitted its initial response to the RFP (the  
5 "Draft Proposal"), and thereafter copies of the Draft Proposal were provided to the  
6 Authority Board, members of the TI CAB, the San Francisco Board of Supervisors, and  
7 interested members of the public, and TICD made presentations of the Draft Proposal at  
8 several public meetings held in San Francisco and on Treasure Island to solicit input  
9 from the public, and the TI/YBI CAB held 16 additional public meetings to discuss the  
10 Draft Proposal and prepare comments for the Authority Board; and,

11 WHEREAS, On January 2, 2003, TICD submitted its revised response to the  
12 RFP (the "Proposal") for the Authority's and the TI/YBI CAB's consideration; and,

13 WHEREAS, The TI/YBI CAB and its subcommittees held several meetings to  
14 review the Proposal and prepared and presented comments to the Authority Board;  
15 and,

16 WHEREAS, The Authority staff met both individually and collectively with a  
17 consultant team to evaluate the Proposal in the context of the evaluation criteria set  
18 forth in the RFP; and

19 WHEREAS, On March 20, 2003, the Authority Board made a determination that  
20 TICD's Proposal met the criteria set forth in the RFP, and authorized the Authority's  
21 Executive Director to enter into exclusive negotiations with TICD regarding the  
22 redevelopment of the Base in a manner consistent with TICD's Proposal, the Staff  
23 Summary, the Reuse Plan, and the EIS/EIR, subject to the Authority's separate  
24 approval of an Exclusive Negotiating Agreement ("ENA"); and  
25

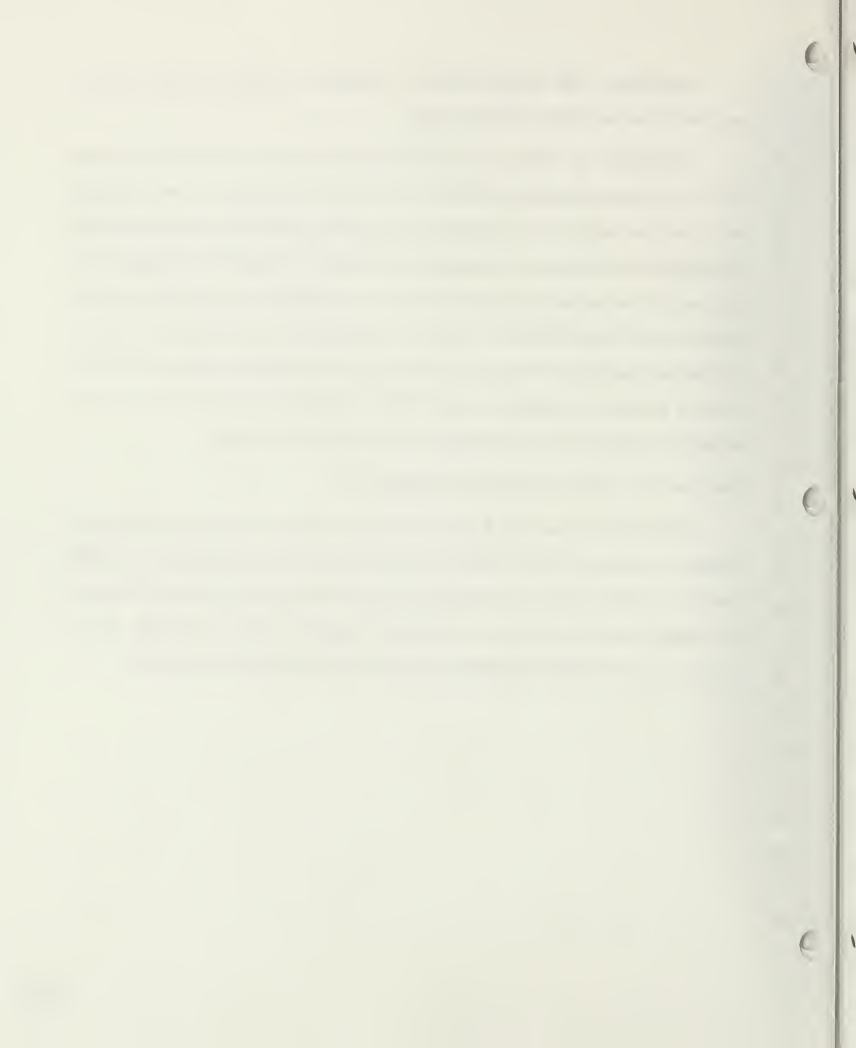


1           WHEREAS, The Authority staff has prepared an ENA with TICD which is  
2 attached to this resolution as Exhibit A; and

3           WHEREAS, the ENA prohibits TIDA from negotiating with entities other than  
4 TICD on the redevelopment of the Base for the term of the ENA, and sets forth terms  
5 and conditions related to the preparation and approval of transaction documents for the  
6 redevelopment of the Base, including but not limited to the subject of the negotiations,  
7 the term of the exclusive negotiation period and options to extend the term, the  
8 allocation and responsibilities related to transaction costs associated with the  
9 negotiations, the obligations of TICD and the Authority during the negotiation period, the  
10 financial guarantee required to cover TICD's obligations under the ENA, and a  
11 schedule of performance for completion of the transaction documents;

12 Now, therefore, in light of the foregoing recitals, be it

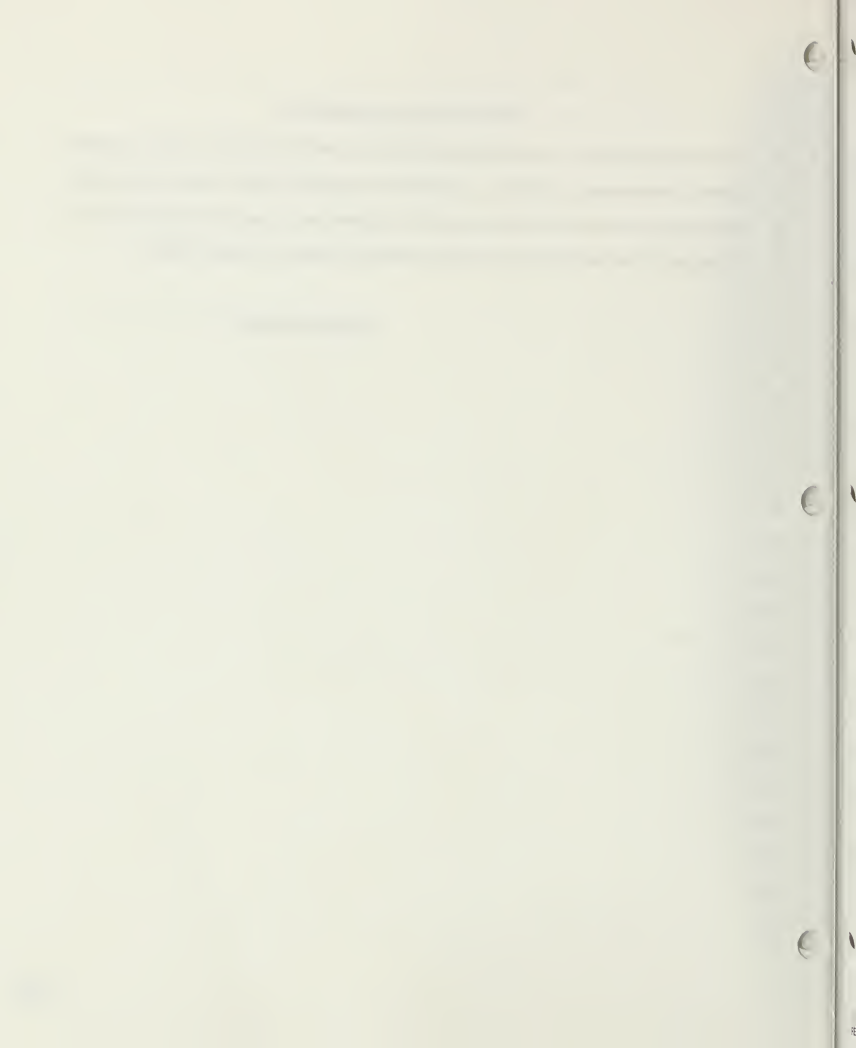
13  
14           RESOLVED, That the Board of Directors hereby authorizes the Executive  
15 Director to execute the ENA with TICD and to enter into modifications to the ENA  
16 (including, without limitation, the attachment of exhibits) that are in the best interests of  
17 the Authority and the City, do not materially change the terms of the ENA, and are  
18 necessary and advisable to effectuate the purpose and intent of this resolution.  
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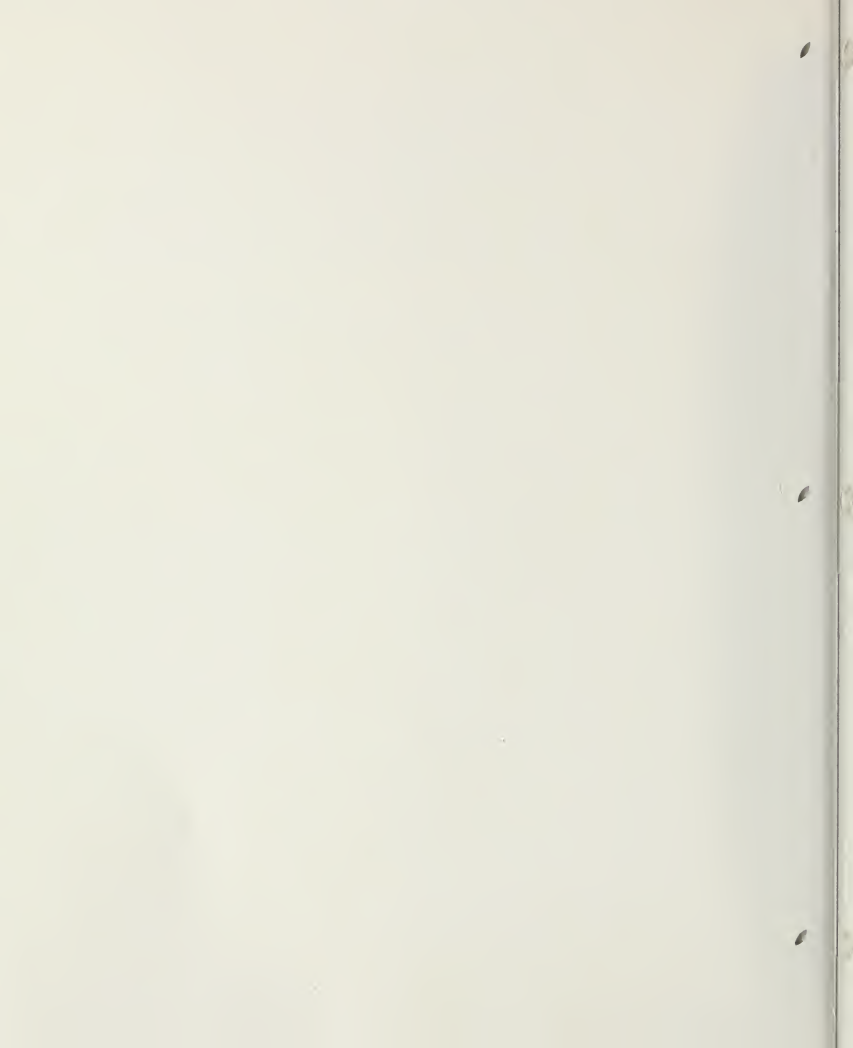
1  
2 CERTIFICATE OF SECRETARY

3 I hereby certify that I am the duly elected and acting Secretary of the Treasure  
4 Island Development Authority, a California nonprofit public benefit corporation,  
5 and that the above Resolution was duly adopted and approved by the Board of  
6 Directors of the Authority at a properly noticed meeting on April 9, 2003.

7  
8 William Fazande  
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**EXCLUSIVE NEGOTIATING AGREEMENT**  
**(Naval Station Treasure Island)**

THIS EXCLUSIVE NEGOTIATING AGREEMENT (this "Agreement") dated as of \_\_\_\_\_, 2003, is between the TREASURE ISLAND DEVELOPMENT AUTHORITY ("Authority"), a public body, corporate, and politic created pursuant to the laws of the State of California and the TREASURE ISLAND COMMUNITY DEVELOPMENT, LLC, a California limited liability company, (the "Developer").

**THIS AGREEMENT IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:**

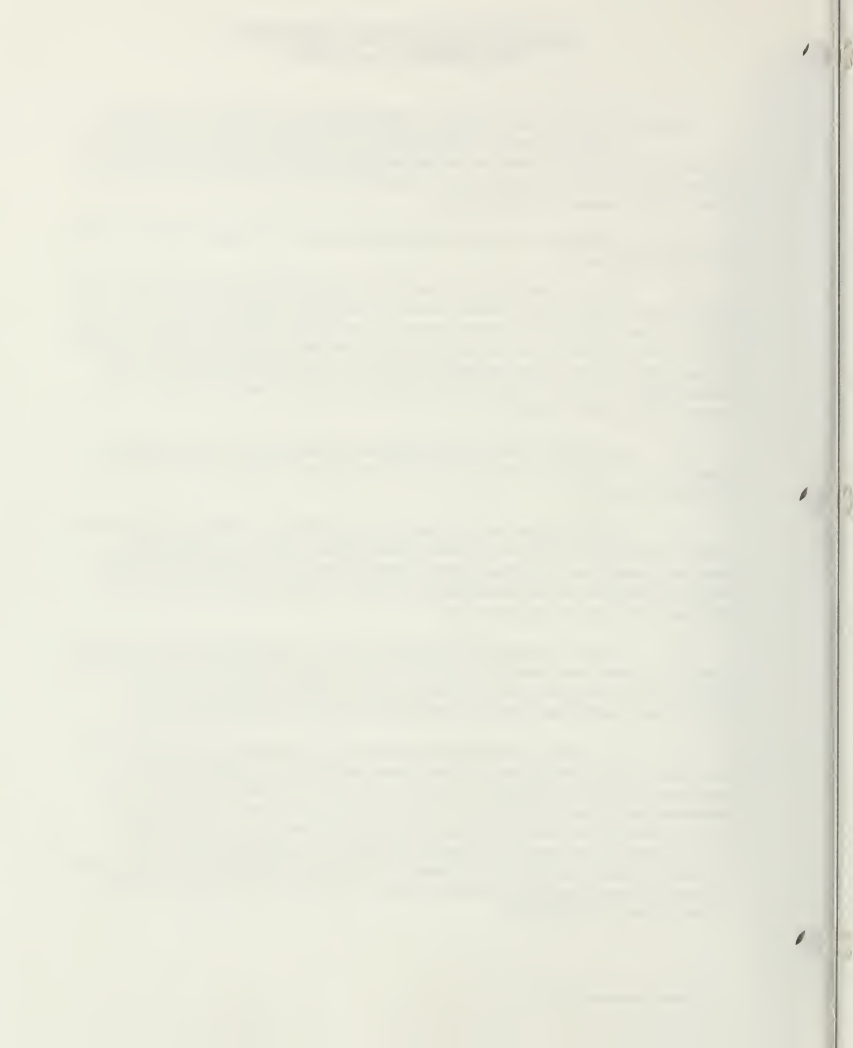
A. The Navy owns in fee all of that certain real property known as the former Naval Station Treasure Island ("NSTI"), located in the City and County of San Francisco ("City"), and consisting of the following two islands connected by a causeway: (1) Treasure Island, comprised of approximately 403 acres of level filled land, and (2) portions of Yerba Buena Island, a natural rock outcropping, steeply sloped and highly vegetated, with elevations rising to over 300 feet above the water. The land within NSTI that is the subject of this Agreement is shown on the attached Exhibit A (the "Property").

B. During World War II, NSTI was used as a center for receiving, training, and dispatching service personnel. After the war, NSTI was primarily used as a naval training and administrative center.

C. In 1993, Congress and the President selected NSTI for closure and disposition by the Base Realignment and Closure Commission acting under Public Law 101-510 and its subsequent amendments. The Department of Defense subsequently designated the City and, later, the Authority as the Local Reuse Authority ("LRA") responsible for the conversion of NSTI under the federal disposition process.

D. In 1994, a Citizen's Reuse Committee ("CRC"), representing a broad spectrum of community interests, was formed to: (1) review reuse planning efforts regarding the NSTI by the San Francisco Planning Department and the San Francisco Redevelopment Agency, and (2) make recommendations to the City's Planning Commission and Board of Supervisors.

E. In July 1996, after an extensive community planning effort, the Draft Reuse Plan (the "Reuse Plan") for NSTI was unanimously endorsed by the City's Mayor, Board of Supervisors, Planning Commission, and the CRC. The City forwarded the Reuse Plan to the Department of Defense in July 1996 to serve as the guiding document for an Environment Impact Statement ("EIS") under the National Environmental Policy Act ("NEPA") and an Environmental Impact Report ("EIR") under the California Environmental Quality Act ("CEQA") related to the transfer of the Property. The Reuse Plan also serves as the basis for the Preliminary Redevelopment Plan for Treasure Island. The EIS and the EIR are collectively referred to herein as the EIS/EIR.



F. Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (the "Act"), the California Legislature (i) designated the Authority as a redevelopment agency under the California Redevelopment Law with authority over NSTI, and (ii), with respect to those portions of NSTI which are subject to the public trust for commerce, navigation and fisheries (the "Tidelands Trust"), vested in the Authority the authority to administer the Tidelands Trust as to such property.

G. The Board of Supervisors approved the designation of the Authority as a redevelopment agency with powers over Treasure Island and Yerba Buena Island under the Act in Resolution No. 43-98, dated February 6, 1998.

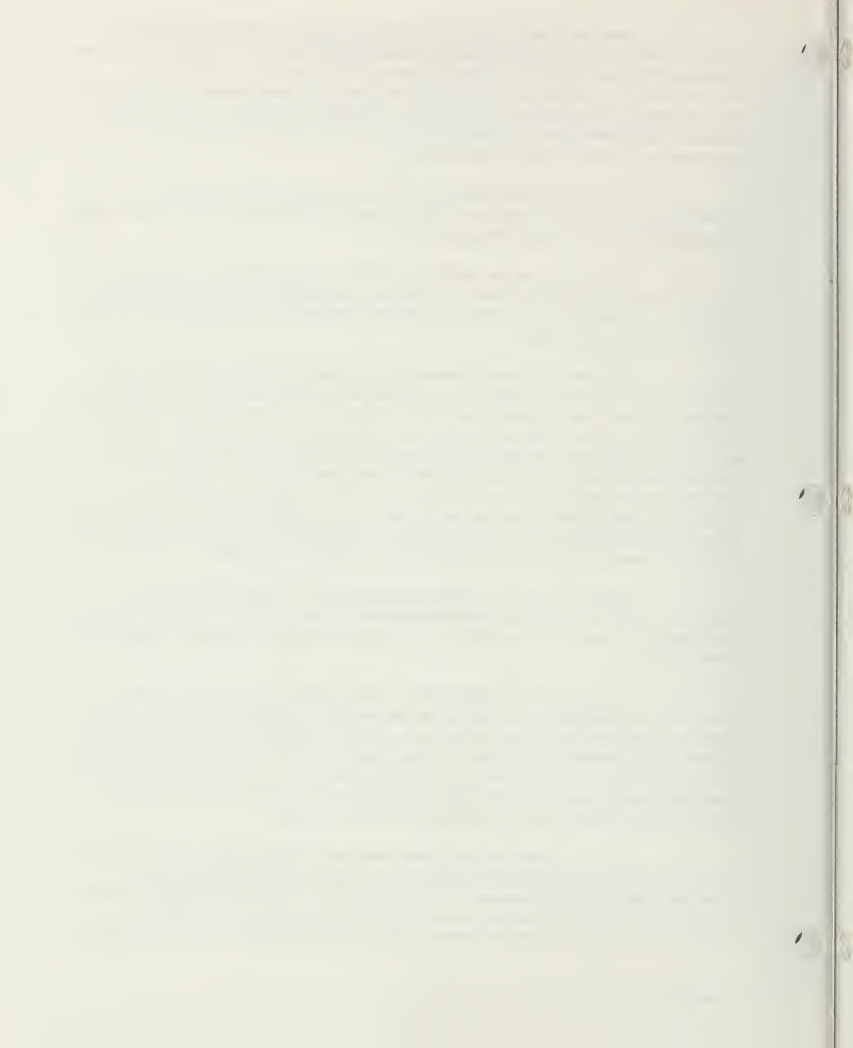
H. Under the Act and the Authority's Articles of Incorporation and Bylaws, the Authority, acting by and through its Board of Directors has the power, subject to applicable laws, to sell, lease, exchange, transfer, convey or otherwise grant interests in or rights to use or occupy all or any portion of the Property.

I. The Property is currently owned by the United States Navy (the "Navy"). On June 19, 2000, the Authority submitted an application (the "Application") to the Navy seeking a "no-cost" Economic Development Conveyance of the Property pursuant to Section 2905(b)(4) of the Defense Base Closure and Realignment Act of 1990, 10 U.S.C. Section 2687, as amended, and related implementing regulations of the Department of Defense (32 CFR Part 175). Since then, the Authority has been seeking to finalize a conveyance agreement with the Navy conveying the Property to the Authority in furtherance of the Application. On December 24, 2002, the Authority asked the Navy to consider negotiating an "Early Transfer" of portions of the Property under Section 9620(h)(3)(C) of CERCLA. Negotiations with the Navy regarding both a conveyance pursuant to the Application and an Early Transfer are on-going.

J. On June 14, 2000, the Authority authorized the issuance of a Request for Qualifications ("RFQ") regarding "master development" of the Property. The RFQ contemplated the issuance of a Request for Proposals ("RFP") to those respondents who met the qualifications under the RFQ.

K. A team of expert consultants hired by the Authority reviewed the materials submitted by the respondents to the RFQ, prepared supplemental information requests to address questions raised during the review process, and together with Authority staff and a designated member of the Treasure Island Citizens Advisory Board ("TICAB"), conducted interviews of the responding teams. On July 11, 2001, the Authority passed a resolution finding that, based on the consultants' analysis and the recommendations of staff, only the Developer met each of the criteria required under the RFQ for proceeding on to the RFP phase.

L. After considering an independent consultant's report and the recommendations of staff, the Authority determined that to best achieve the goals of the Reuse Plan and avoid significantly delaying the implementation of the Reuse Plan, the Authority should (1) proceed with the original solicitation process set forth in the RFQ by issuing a focused RFP to the Developer, and then (2) evaluate the content of the Developer's response to the focused RFP to



determine whether the Authority should enter into exclusive negotiations with the Developer regarding the implementation of its proposal. The Authority held numerous public meetings to draft an RFP, which included input from the TICAB, and on April 10, 2002, the Authority authorized the Executive Director of the Authority to issue the focused RFP to the Developer.

M. After an extensive evaluation process in which the Developer submitted a draft response to the focused RFP, and that submittal was reviewed by Authority staff and consultants, the TICAB, and the Authority Board (including numerous public meetings); the Developer then submitted a revised response to the focused RFP, and that revised response was reviewed by a team of expert consultants, Authority staff, the TICAB and the Authority Board; the Authority has determined that the Developer's revised response to the focused RFP meets the criteria set forth in the RFP and warrants entering into exclusive negotiations with the Developer.

N. The parties now wish to enter into this Agreement to set forth the terms and conditions under which they are willing to negotiate (i) a disposition and development agreement ("DDA") and related ground leases and/or conveyance agreements and (ii) other necessary transaction documents for the conveyance, management and redevelopment of the Property (the other documents and the DDA are collectively referred to as the "Transaction Documents").

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Authority and the Developer agree as follows:

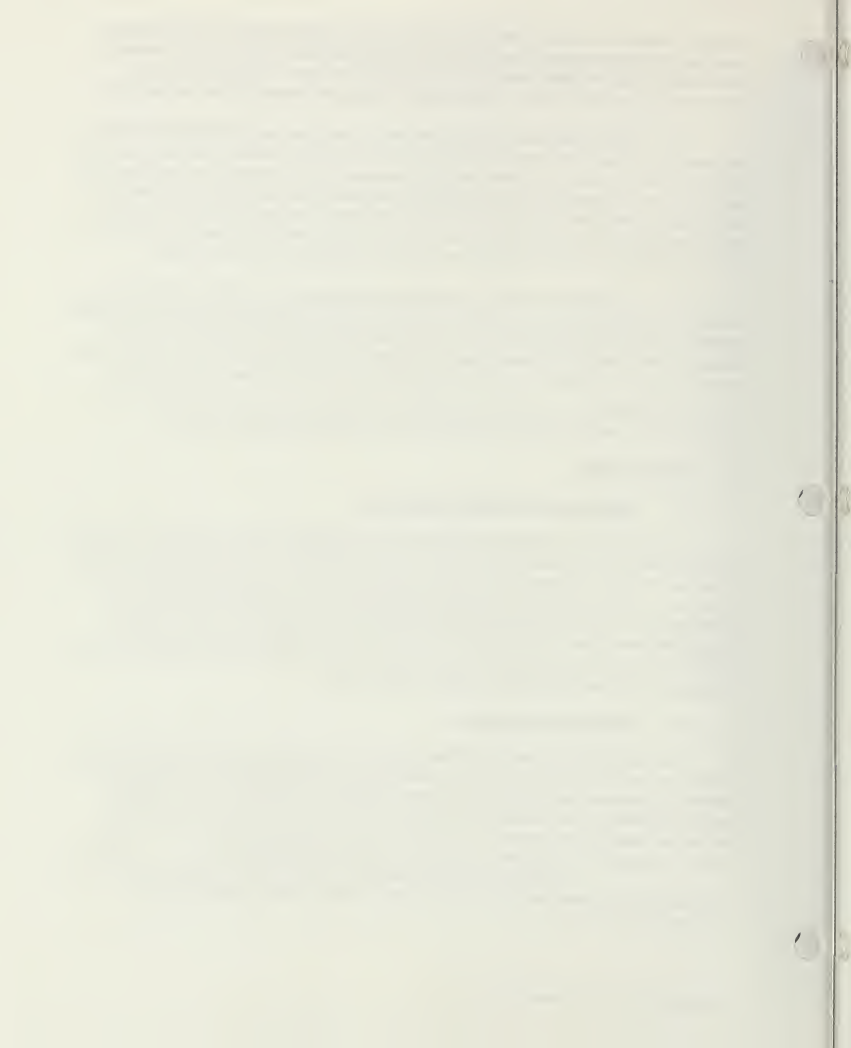
**1. Exclusive Right.**

**1.1 Diligent and Good Faith Negotiations.**

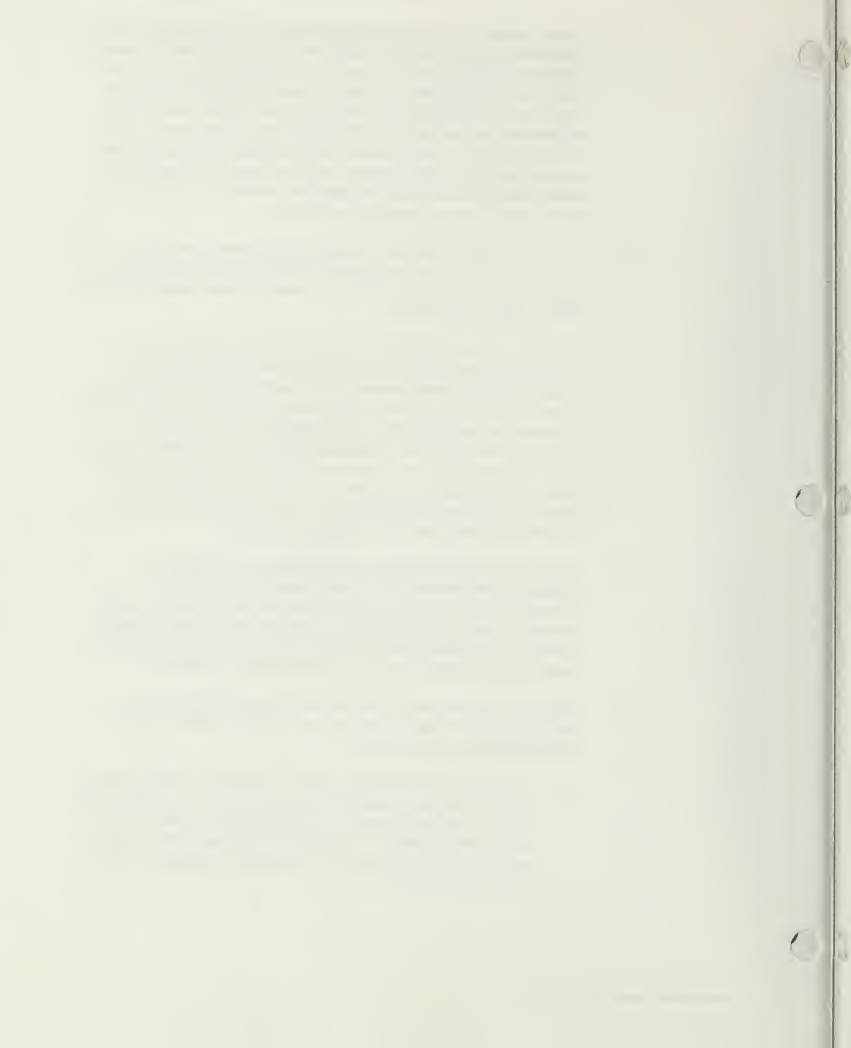
For the Exclusive Negotiation Period set forth in Section 2 below and subject to the terms and conditions of this Agreement, the Authority and the Developer, acknowledging that time is of the essence, agree to negotiate diligently and in good faith the Transaction Documents for the conveyance, redevelopment and management of the Property. The Authority grants to the Developer the exclusive right to negotiate the Transaction Documents during the Exclusive Negotiation Period (the "Exclusive Right") and agrees not to solicit any other proposals or negotiate with any other private developer with respect to the subject of the negotiations set forth in Section 1.2 without the Developer's prior written consent.

**1.2 Subject of Negotiations.**

The Transaction Documents and the negotiations conducted under this Agreement shall be based on the development opportunity described in the RFQ and the RFP, the Rcuse Plan, the Authority's Economic Development Conveyance Application to the Navy, the development proposal submitted by the Developer in response to the RFQ and RFP, and the Authority's resolutions regarding that proposal and the grant of the Exclusive Right hereunder, including without limitation, the conditions set forth in the Authority's Resolution No. \_\_\_\_\_ dated \_\_\_\_\_ (together, the "Project Guidelines"). Specifically, subject to the terms and conditions of this Agreement, the Exclusive Right shall encompass negotiations for the Developer to:

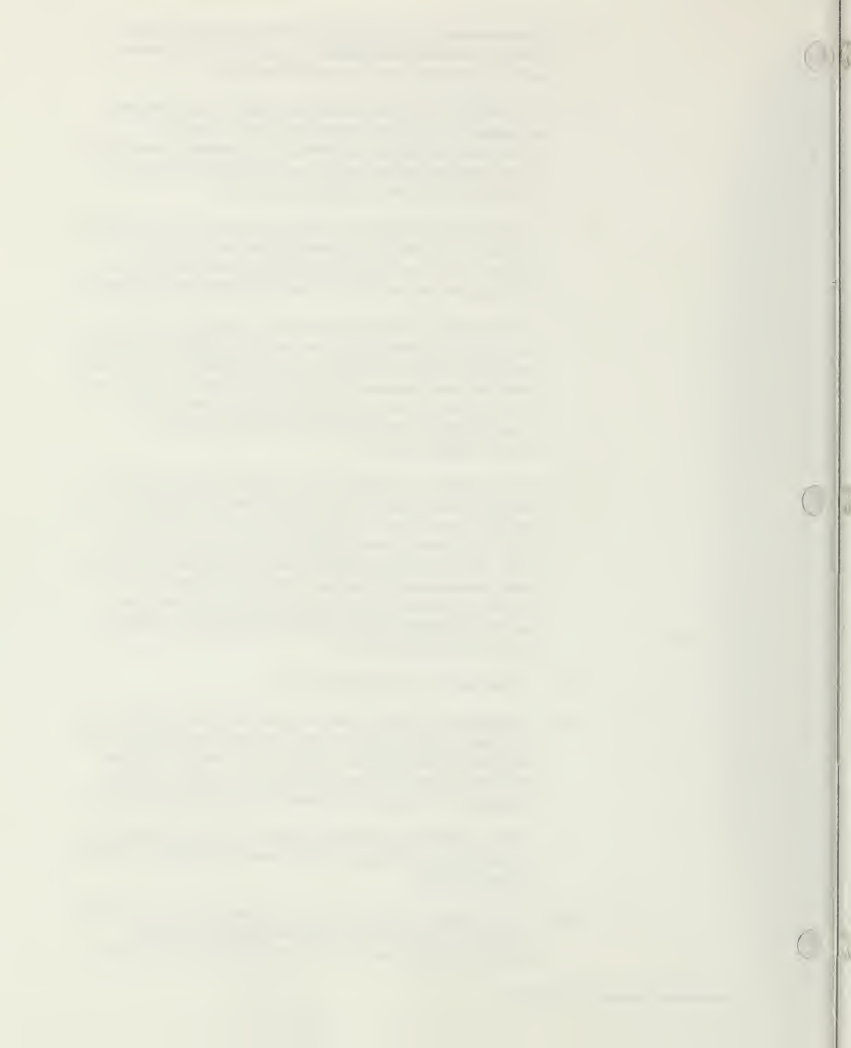


- (a) Prepare certain intermediate documents related to the preparation of the Transaction Documents in accordance with the Schedule of Performance attached as Exhibit B to this Agreement, including the Studies and the Term Sheet described therein. As a precursor to negotiating the Term Sheet, the parties will negotiate and agree upon a "framework" for such negotiations that outlines a pro-forma based negotiating process that, among other things, distinguishes certain baseline project development cost and revenue assumptions from required community benefits in a manner that allows the parties to iteratively evaluate the impacts of modifications to various project assumptions.
- (b) Participate with the Authority in negotiating agreements with the Navy for the transfer, remediation, management and development of the Property, provided that the Authority shall retain control of those negotiations as set forth in Section 5.1(c) below.
- (c) Participate with the Authority, upon request by the Authority, in (i) negotiating an agreement with the State Lands Commission for the exchange of public trust interests within the Property in order to permit redevelopment in accordance with plans approved by the Authority, and (ii) seeking the adoption of any State legislation regarding the trust property as required for the implementation of a redevelopment plan (the "Redevelopment Plan") to be approved by the Authority and the City's Board of Supervisors in accordance with the California Community Redevelopment Law, provided that the Authority shall retain control of those negotiations as set forth in Section 5.1(c) below.
- (d) Participate with the Authority, upon request by the Authority, in negotiating agreements with the State Department of Public Transportation ("Caltrans") regarding the mitigation of impacts on the Property caused by the construction of the new eastern span of the San Francisco-Oakland Bay Bridge, provided that the Authority shall retain control of those negotiations as set forth in Section 5.1(d) below.
- (e) Enter into a DDA to provide for the redevelopment of the Property in a timely manner. The parties anticipate that the DDA will cover the following matters, among others:
  - (1) The manner that the Property will be transferred to the Developer, which the parties anticipate will be by long-term ground lease and, subject to the restrictions of the Tidelands Trust, transfers of fee title to portions thereof. The parties expect that the form of any applicable ground leases and/or conveyance agreements will be attached to the DDA.



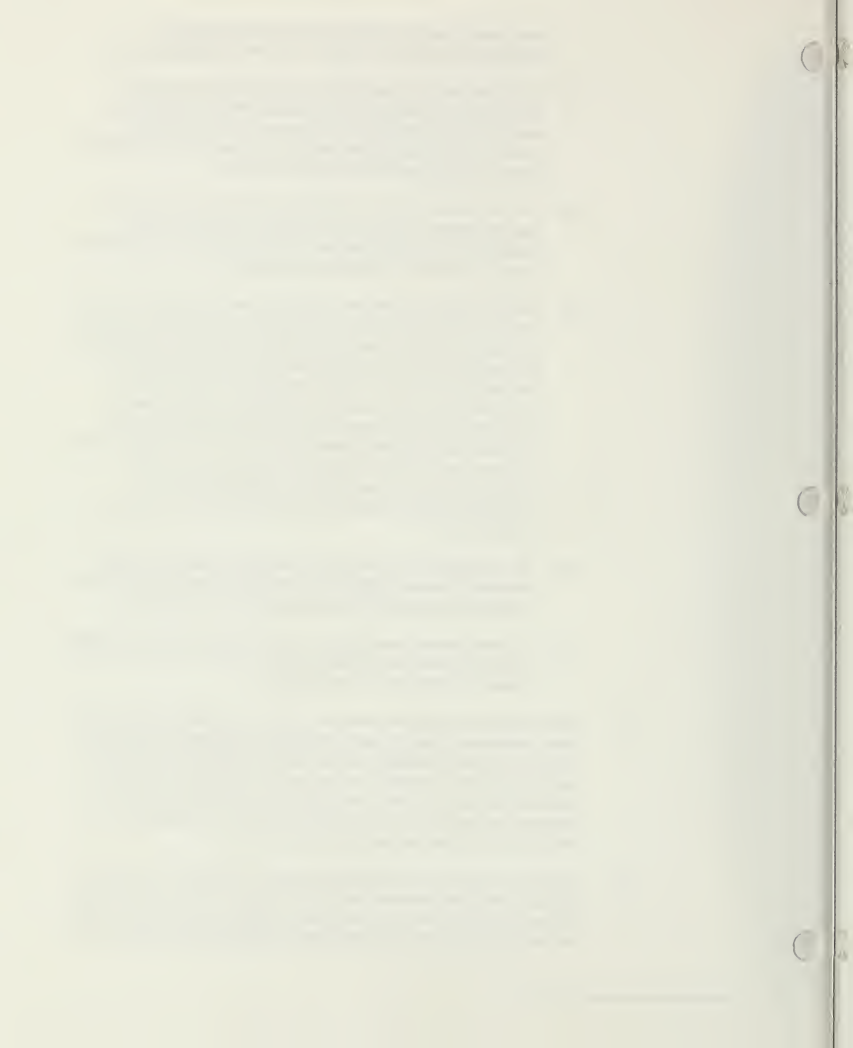


- (2) The consideration to the Authority for the conveyance of the Property, including participation in cash flow from operations and/or in net proceeds of sales and refinancings.
- (3) The conditions to conveyance of the Property to the Developer, including, but not limited to, evidence that the approved development project has secured sufficient financing commitments to complete development and has secured required Regulatory Approvals (as set forth in Section 5.1(f) below).
- (4) The Developer's obligation to build out the Property in accordance with an infrastructure plan, a phasing plan, and a schedule of performance, with a reasonably detailed scope of development, including penalties for failure to meet the schedule of performance.
- (5) A comprehensive financing and revenue sharing plan. Among other things, the financing and revenue sharing plan will address the priorities for payment and rates of return applicable to both parties' respective contributions to the project, including land, equity, and financing and the reasonable predevelopment costs actually incurred by the parties after the date of this Agreement ("Predevelopment Costs").
- (6) The Term Sheet will identify, and the DDA will incorporate, an initial cap on the amount of both parties' Predevelopment Costs that may be recovered from the project, and specific priorities for payment and rates of return applicable to such Predevelopment Costs. The initial cap shall be periodically adjusted, subject to the mutual agreement of the parties. For these purposes, any of the Authority's Transaction Costs actually paid by the Developer pursuant to Section 3.2 below shall count against the Authority's cap on Predevelopment Costs.
- (7) A final land use and open space plan.
- (8) The process for design review and approval by the Authority (and, if applicable, by the City) for major development phases, as well as individual building projects, including the manner in which the Developer will provide drawings, elevations, models, and other depictions of the design and construction details for development.
- (9) The Developer's responsibility to comply with all applicable City and Authority requirements and Regulatory Approvals as described in Section 5.1(g).
- (10) The Developer's obligation to work cooperatively with the TIHDI Job Broker Program and the scope and quality of economic development opportunities for TIHDI member organizations and



other public benefit programs, including the community participation programs, as further described in Section (g) below.

- (11) The Developer's responsibility to comply with environmental requirements, including deed restrictions and other institutional controls imposed by regulatory agencies under the CERCLA process, and with mitigation measures required under the EIS/EIR and any environmental improvement measures.
  - (12) The reservation of such powers and controls by the Authority as may be necessary to prevent the transfer, retention, or use of property for speculative purposes and to ensure that development is carried out pursuant to the Project Guidelines.
  - (13) The provision of an adequate means to assure the Authority and the City of sufficient financial wherewithal and commitment to fulfill the financial, indemnification, and other performance obligations of the Developer. Subject to agreement of the parties, such means may include, by way of example only and without limitation, guaranties from suitable entities, performance deposits, and/or surety bonds that are appropriate for the guaranteed obligations. The Authority shall make determinations as to the adequacy of such assurances in good faith in light of the public purposes and development objectives of the Project Guidelines and the requirements of the Community Redevelopment Law and other applicable laws.
  - (14) The Developer's, the Authority's and TIHDI's respective rights, responsibilities and obligations regarding the implementation of a comprehensive affordable housing program for the Property.
  - (15) A comprehensive transition plan regarding the relocation of existing uses and residents and TIHDI programs, and plans to minimize the impacts of construction on existing uses.
- (f) Provide interim management services to all or any portion of the Property under a sublease or other mutually acceptable arrangement ("Sublease") with the Authority, including, without limitation, property management, marketing, leasing, financing, and community outreach activities. The Sublease shall also address the allocation of uses of lease revenues, the allocation of liabilities and responsibilities, and the consideration to the Developer for performing the management services.
  - (g) Establish a community participation program, including, at a minimum,
    - (i) job-training programs and facilities and education and hiring programs designed to provide permanent and construction job opportunities for low-income San Franciscans and consistent with applicable Authority and City

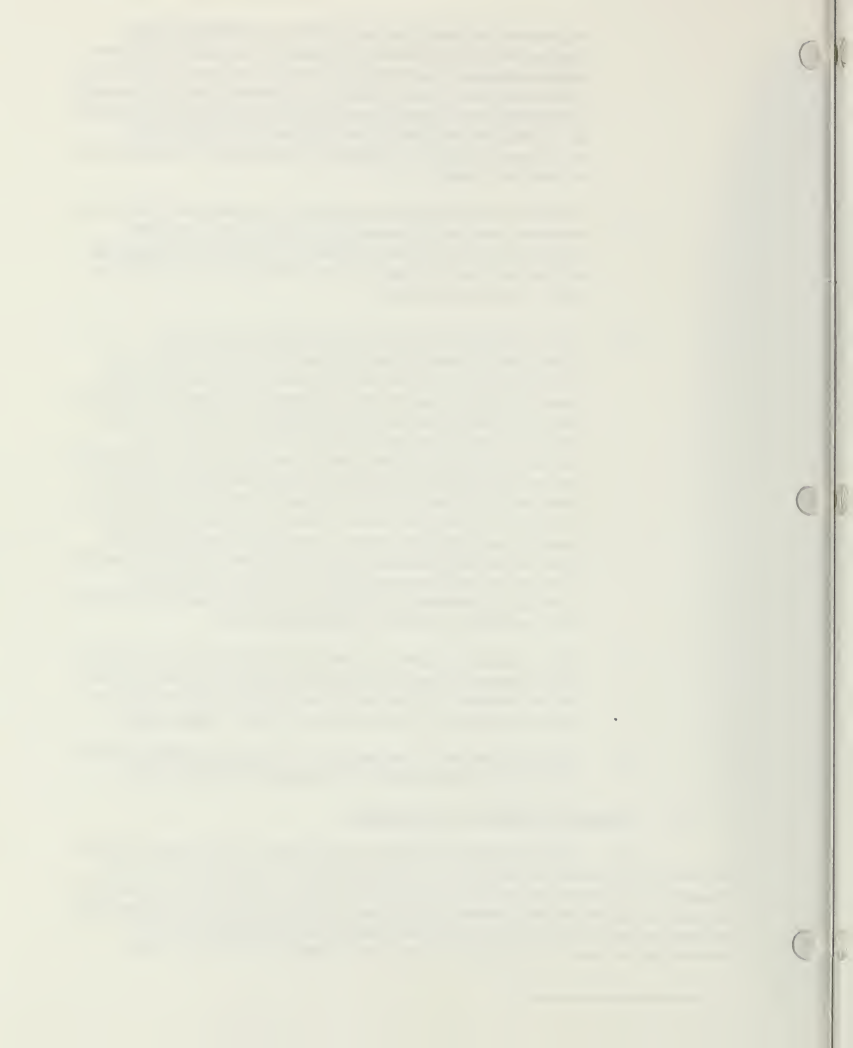


requirements (including First Source Hiring, the TIHDI Job Broker Program, and Equal Opportunity Programs); (ii) economic development programs designed to encourage the successful location of locally-owned, economically disadvantaged businesses on Treasure Island; (iii) ownership opportunities for City residents and businesses; (iv) housing opportunities for City residents, especially current residents of the Property; and (v) education, cultural and recreation facilities serving City residents and the region as a whole.

- (h) Provide for the financing and completion of demolition and all other site preparation work and all construction of improvements and public infrastructure required for redevelopment of the Property, provided that the Developer shall coordinate with the Authority and the City as to any public or tax-exempt financing.
- (i) Under the direction and control of the Authority and the City,
  - (i) participate in managing the expeditious remediation of Hazardous Materials as part of the redevelopment process in conformity with the regulatory agency's requirements, including characterization, handling and disposal of contaminated soil and groundwater, remediation of asbestos-containing materials and lead-based paint before rehabilitation or demolition of existing buildings, and (ii) manage long-term environmental deed restrictions and other institutional controls associated with Parcels transferred by the Navy. Without limiting the generality of the foregoing, Developer shall participate with the Authority in negotiating an Early Transfer of portions of the Property, including agreements with state and/or federal regulatory agencies with jurisdiction over the environmental remediation of the Property, and agreements with environmental remediation contractors; provided that the Authority shall retain control of those negotiations as set forth in Section 5.1(c) below.
- (j) Obtain Regulatory Approvals (as defined in Section 5.1(e)) as needed to fully implement the project pursuant to the Project Guidelines, provided that the Developer's efforts to obtain such approvals shall be under the direction and control of the Authority as set forth in Section 5.1(e).
- (k) Establish procedures for implementation of mitigation measures adopted by the City, Authority, and the Navy through the EIS/EIR process.

### 1.3 **Threshold Conditions and Limitations.**

(a) Authority and City Discretion. The Developer acknowledges and agrees that under this Agreement the Authority is not committing itself or agreeing to enter into the Transaction Documents or undertake any exchange or transfer of real property, or to grant any disposition of any real property interests to the Developer, approve any land use entitlements or undertake any other acts or activities relating to the subsequent independent exercise of discretion by the Authority or any agency, commission or department of the City. This

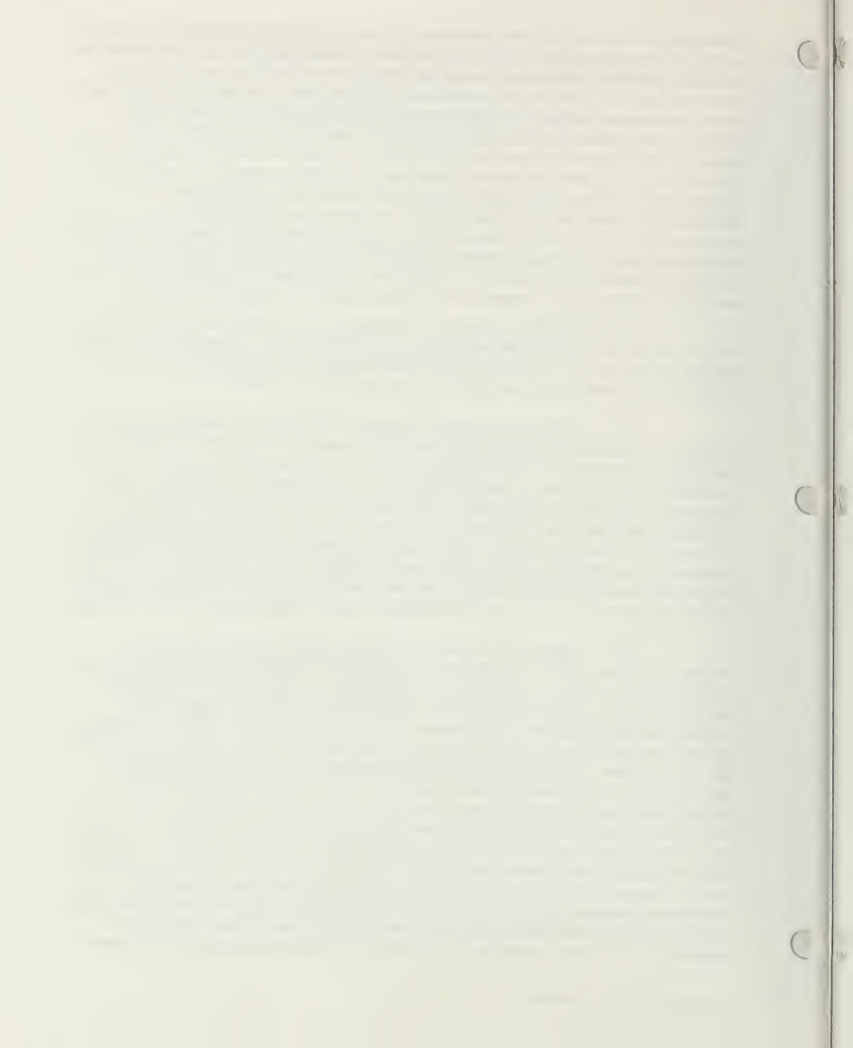


Agreement does not constitute the disposition of property or exercise of control by the Authority or the City over property, and no such legal obligation will exist unless and until the parties have negotiated, executed, and delivered mutually acceptable Transaction Documents based upon information produced from the environmental review process and upon other public review and hearing processes and subject to all applicable governmental approvals, including, without limitation, the approval of the Authority and the City in their respective sole and absolute discretion. The Authority and the City each retains the absolute discretion before action on the Transaction Documents by the Authority Board and/or any City commission or the Board of Supervisors to (i) subject to the agreement of the parties, make such modifications to the Transaction Documents and the project as may be necessary to mitigate significant environmental impacts or as may otherwise be necessary or appropriate, (ii) select other feasible alternatives to avoid significant environmental impacts, (iii) balance the benefits against any significant environmental impacts prior to taking final action if such significant impacts cannot otherwise be avoided, or (iv) determine not to proceed with the Transaction Documents.

(b) Developer Discretion. By entering into this Agreement, the Developer does not commit itself to enter into binding Transaction Documents. The parties recognize that the Developer must first complete due diligence investigations and negotiate the terms of the Transaction Documents before exercising its discretion to enter into them.

(c) Navy and State Lands Agreements. The Developer acknowledges and agrees that any obligations of the Authority under the Transaction Documents with respect to the disposition of the Property, or any portion thereof, shall be subject, among other things, to the successful negotiation of contractually binding agreements between the Authority and (i) the Navy for the conveyance of the Property, and (ii) the State Lands Commission relating to any exchange of public trust interests within the Property. In addition, the parties acknowledge that other agreements with governmental and/or regulatory agencies may be required for assembly of the site or for redevelopment of all or portions of the Property, such as agreements with Caltrans, Federal and State environmental regulatory agencies and the State Historic Preservation Officer. The Developer shall participate in such negotiations with the Authority as provided in Section 6.

(d) Marina. On January 21, 1998, the Authority issued a Request for Proposals ("Marina RFP") to evaluate proposals related to the redevelopment and expansion of the Treasure Island Marina. On February 17, 1999, the Board of Directors of the Authority adopted a resolution authorizing the Executive Director of the Authority to enter into an exclusive negotiating agreement with Treasure Island Enterprises ("TIE") for the development of the Treasure Island Marina in accordance with the Marina RFP and TIE's response to the Marina RFP. On September 2, 1998, the Authority and TIE entered into a sublease for the interim operation by TIE of the existing marina, including, without limitation, the performance of all property management, marketing, leasing, protection, maintenance and repair responsibilities of the Authority required under its Master Lease with the United States Government, acting by and through the United States Navy (the "Navy"). On November 10, 1999, the Authority considered TIE's Preliminary Development Concept for the New Marina, and on November 14, 2001, the Authority approved a term sheet setting forth the material business terms of a disposition and development agreement governing development of the marina by TIE (the "Marina Term Sheet"). The Authority intends to bring forward for approval a final disposition and development agreement and long-term ground lease for development of the marina in a manner consistent





with TIE's Preliminary Development Concept and the Marina Term Sheet (the "Marina Project") prior to expiration of the Exclusive Negotiating Period (as defined below) under this Agreement. The scope of the Exclusive Right granted under this Agreement shall not include the Marina Project unless and to the extent TIE, the Authority and the Developer agree in writing, in their respective sole and absolute discretion, to the contrary.

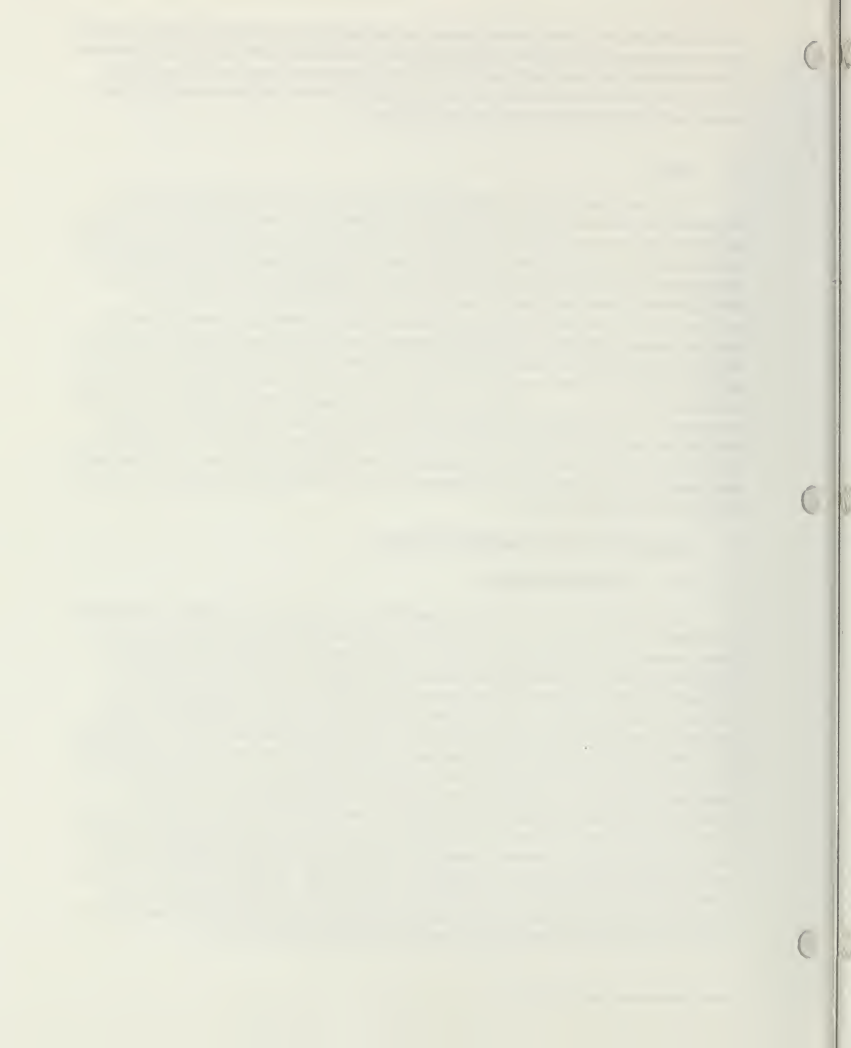
## **2. Term.**

The term of the Exclusive Right shall (a) commence as of the Effective Date of this Agreement, which shall be the date when all of the following have been satisfied: (i) the parties hereto have duly executed and delivered this Agreement, (ii) the Authority Board has approved this Agreement in its sole discretion, and (iii) Lennar Corporation has executed and delivered to the Authority the Guaranty in the form attached hereto as Exhibit C (the "Guaranty") or such other agreements providing adequate means of assuring the Authority of the Developer's sufficient financial wherewithal and commitment to fulfill its financial, indemnification and other performance obligations under this Agreement, such as performance and/or surety bonds, as may be approved by the Authority's Executive Director in her sole and absolute discretion, no later than ten (10) business days after the date of Authority Board's approval of this Agreement; and (b) expire on \_\_\_\_\_, 200\_, (i.e., eighteen (18) months after the Effective Date of this Agreement), unless extended in accordance with Section 4 below or terminated in accordance with the provisions of this Agreement (the "Exclusive Negotiation Period"). This Agreement shall automatically terminate upon the expiration of the Exclusive Negotiation Period and neither party shall have any further rights or obligations except with respect to those matters that survive termination under Section 12.13.

## **3. Negotiation Deposits; Authority/City Costs.**

### **3.1 Negotiation Deposits.**

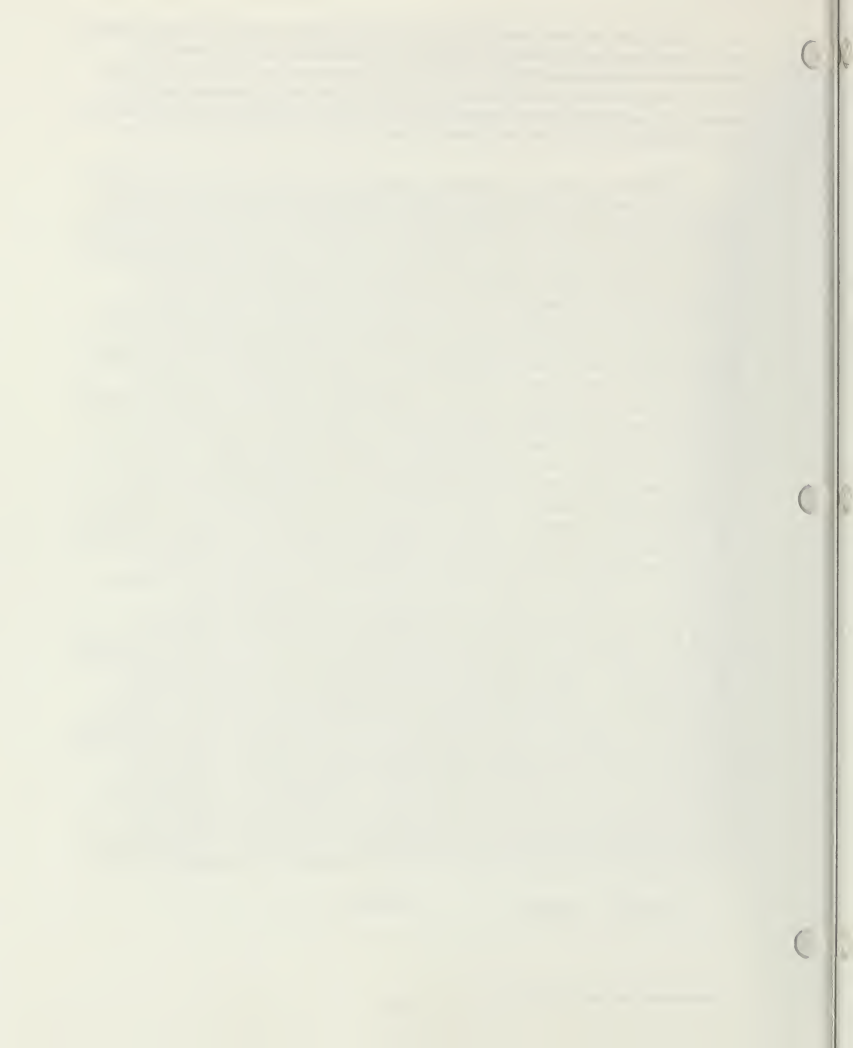
In connection with its submittal of qualifications in response to the RFQ, the Developer paid to the Authority the cash sum of One Hundred Thousand Dollars (\$100,000) as an earnest money deposit (the "Earnest Money Deposit"). Pursuant to the requirements of the RFP, the Developer increased the Earnest Money Deposit by an additional One Hundred Thousand Dollars (\$100,000). Pursuant to the requirements of the RFP, the Developer shall pay to the Authority an additional sum of One Hundred Fifty Thousand Dollars (\$150,000) in cash as a performance deposit (the "Performance Deposit") within ten (10) business days of the Effective Date. The Earnest Money Deposit (as increased by the RFP) and the Performance Deposit, and, if applicable, the Extension Option Deposit described in Section 4.1, are collectively referred to herein as the "Deposits." The Deposits will be held by the Authority to ensure that the Developer will proceed diligently and in good faith to negotiate the Transaction Documents and perform the Developer's obligations under this Agreement. Subject to the Authority's rights to use the Deposits to pay for certain Transaction Costs as set forth in Section 3.2(b) below, the Authority shall keep the Deposits in a separate account in such manner as the Authority deems appropriate in its sole discretion. Any allocation of interest on the Deposits payable to the Developer or the Authority under this Agreement shall be calculated based on the net amount actually earned and deposited in such account for the period involved, if any.



If the parties succeed in negotiating and entering into the Transaction Documents and if the Authority Board and the Board of Supervisors for the City approves the Transaction Documents in accordance with the provisions of this Agreement, then the Deposits (together with any interest actually paid thereon as provided herein, but less any amounts used by the Authority to pay for Transaction Costs pursuant to this Agreement) shall be applied towards any land purchase payments and/or performance deposits required by the Authority thereunder.

IF THE PARTIES FAIL TO REACH AGREEMENT DESPITE THE DEVELOPER'S GOOD-FAITH NEGOTIATIONS OR IF THE TRANSACTION DOCUMENTS ARE NOT APPROVED, EXECUTED AND DELIVERED AS CONTEMPLATED HEREBY FOR ANY REASON OUTSIDE OF THE DEVELOPER'S CONTROL (EXCLUDING THE INABILITY TO OBTAIN FINANCING) AND, IN EITHER INSTANCE, THE DEVELOPER IS NOT IN DEFAULT UNDER THIS AGREEMENT, THEN UPON TERMINATION OF THIS AGREEMENT THE AUTHORITY SHALL PROMPTLY RETURN THE DEPOSITS (TOGETHER WITH INTEREST ACTUALLY PAID THEREON AS HEREIN PROVIDED, BUT LESS ANY AMOUNTS USED BY AUTHORITY TO PAY FOR TRANSACTION COSTS PURSUANT TO THIS AGREEMENT) TO THE DEVELOPER. IF THE PARTIES DO NOT REACH AGREEMENT ON THE TRANSACTION DOCUMENTS OR THE TRANSACTION DOCUMENTS ARE NOT APPROVED, EXECUTED, AND DELIVERED AS CONTEMPLATED HEREBY DUE, IN EITHER INSTANCE, IN WHOLE OR IN PART, TO ANY DEFAULT BY THE DEVELOPER UNDER THIS AGREEMENT, THEN, WITHOUT LIMITING ANY OF ITS OTHER REMEDIES HEREUNDER AT LAW OR IN EQUITY (INCLUDING, WITHOUT LIMITATION, DAMAGES OTHER THAN THE UNREIMBURSED ADMINISTRATIVE EXPENSES REPRESENTED BY THE DEPOSITS), OR UNDER THE GUARANTY, THE AUTHORITY SHALL BE ENTITLED TO RETAIN THE DEPOSITS, TOGETHER WITH ALL INTEREST THEREON AS HEREIN PROVIDED, AS LIQUIDATED DAMAGES FOR THE UNREIMBURSED ADMINISTRATIVE EXPENSES OF THE AUTHORITY AND THE CITY. THE PARTIES HAVE AGREED THAT THE AUTHORITY'S ACTUAL DAMAGES FOR UNREIMBURSED ADMINISTRATIVE EXPENSES, IN THE EVENT OF A FAILURE TO APPROVE, EXECUTE, AND DELIVER THE TRANSACTION DOCUMENTS AS SPECIFIED IN THE PRECEDING SENTENCE, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, THE AMOUNT OF THE DEPOSITS TOGETHER WITH ALL ACCRUED INTEREST THEREON AS HEREIN PROVIDED IS A REASONABLE ESTIMATE OF THE DAMAGES FOR UNREIMBURSED ADMINISTRATIVE EXPENSES THAT THE AUTHORITY WOULD INCUR IN SUCH EVENT. BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS: Authority \_\_\_\_\_ Developer \_\_\_\_\_



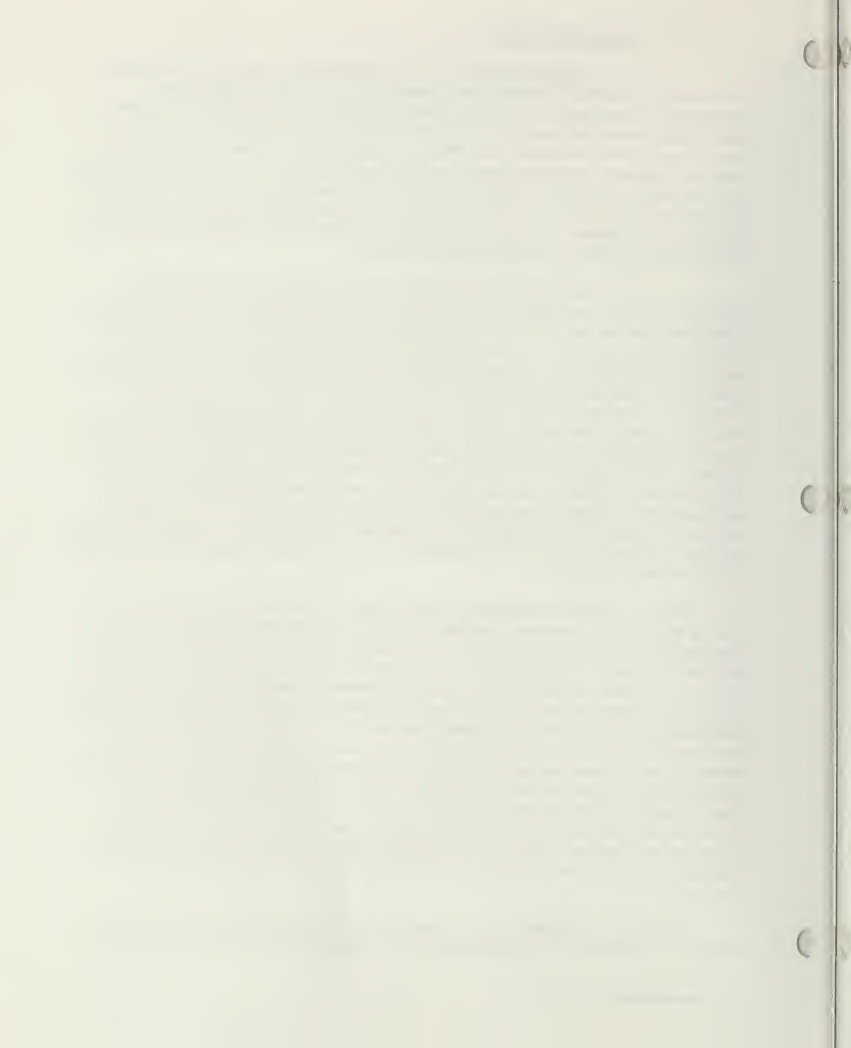
### 3.2 Authority/City Costs.

(a) Entitlement Costs. The Developer shall pay or cause to be paid all costs associated with applying for, obtaining and maintaining any necessary or appropriate entitlements for development of the Property, including the Regulatory Approvals described in Section 5.1(g) below (including, but not limited to, amendments to the City's General Plan needed to implement the Redevelopment Plan), all costs associated with satisfying any and all conditions imposed by regulatory agencies as part of any Regulatory Approvals, and the costs of environmental review related to the Transaction Documents required under CEQA. Neither the Authority nor the City shall be responsible for costs associated with obtaining such Regulatory Approvals or entitlements, except as may be specifically agreed by the Authority or the City in writing, in their respective sole and absolute discretion.

(b) Transaction Costs. In addition to the entitlement costs described in Section 3.2(a) above, and subject to the provisions of this subsection below, the Developer may be required to pay or cause to be paid to the Authority some or all of the reasonable costs and expenses actually incurred by the Authority and the City consistent with this Agreement in negotiating and seeking required approvals of the Transaction Documents and of the agreements with the Navy, the State Lands Commission, the Department of Toxic Substances (DTSC), Caltrans, and other governmental agencies required in connection with the transfer of the Property and the implementation of the Transaction Documents (collectively, the "Transaction Costs"). Transaction Costs shall include, without limitation, the fees and expenses of (i) the City Attorney's Office, the City, and the Authority staff, (ii) such outside counsel and third-party consultants, advisors and professionals (including, but not limited to, financial advisors, real estate and urban economic consultants, and development consultants) as the Authority or the City may deem appropriate to negotiate the Transaction Documents, subject to the provisions of this Section below, and (iii) costs incurred by the City or the Authority related to public outreach and information in the City.

Subject to sufficient appropriations by the Board of Supervisors to the Authority for the purpose of addressing the matters described in Section 1.2 above, the Authority intends to pay for a portion of its own Transaction Costs. However, the Authority may require the Developer to pay, and Developer hereby agrees to pay for a portion of the Authority's Transaction Costs an amount not to exceed cumulatively One Hundred Thousand Dollars (\$100,000) per month times each month of the Exclusive Negotiation Period, including any extension periods (the "Authority Reimbursement Cap"). (Thus, for example, upon the Effective Date of this Agreement, absent any extensions of the Exclusive Negotiation Period pursuant to the Extension Option or for events of Force Majeure, the amount of the Authority Reimbursement Cap would be One million Eight Hundred Thousand Dollars (\$1,800,000).) Within five (5) business days of the Effective Date of this Agreement, and every six (6) months thereafter, the Authority shall submit to Developer an anticipated budget (consistent with the Authority Reimbursement Cap) of the portion of the Authority's Transaction Costs that the Authority expects the Developer will be required to pay for the succeeding six (6)-month Exclusive Negotiation Period (each, a "Budget").

The parties acknowledge that each Budget will be based on the costs related to the Transaction Documents on the assumption that the Transaction Documents will be consistent



with matters described in Section 1.2 above. The parties further acknowledge and agree that while the Authority believes each Budget and the Authority Reimbursement Cap will be adequate for the completion of the negotiations within the initial eighteen (18)-month Exclusive Negotiation Period, each Budget and the Authority Reimbursement Cap may need to be modified by the Authority from time to time to add consultants and/or increase cost estimates of staff and/or outside contractors or to address changes in the scope of the negotiations. To the extent any changes in a Budget would cause that Budget (combined with any prior sums actually paid to the Authority by Developer for its Transaction Costs) to exceed the total amount of the then-applicable Authority Reimbursement Cap, such changes will require the prior written approval of Developer, which approval shall not be unreasonably withheld, conditioned, or delayed.

The Authority shall deliver to the Developer bi-annually a summary relating to the Authority's and City's actual expenditures of the Transaction Costs during the previous six-month period. The summary shall be in a reasonably detailed form and shall include a description of the services performed and the costs to be reimbursed, and the Authority shall provide such supporting documentation as the Developer may reasonably request to verify that the Transaction Costs were incurred pursuant to this Agreement. The Authority and the Developer shall cooperate with one another to develop a Transaction Cost Report (each, a "Transaction Costs Report") format that satisfies the reasonable informational needs of the Developer to justify expenditures for the Authority's Transaction Costs in accordance with this Agreement. The Transaction Cost Report shall be binding on the Developer in the absence of error demonstrated by the Developer.

Subject to the Developer's receipt of a Transaction Cost Report for the previous six (6) month period, the Developer shall pay to the Authority within thirty (30) days' receipt of such Transaction Cost Report the amount of the Transaction Costs set forth therein, provided such costs were both reasonable and actually incurred over the immediately preceding six month period, subject to the total amount of the Authority Reimbursement Cap. If Developer fails to make any such payment within such period, the Authority may deduct the amount due and owing from the Deposits without limiting any of its other rights and remedies hereunder, and Developer shall be required within three (3) days of written notice thereof to replenish the Deposits by an amount equal to the amount deducted by the Authority.

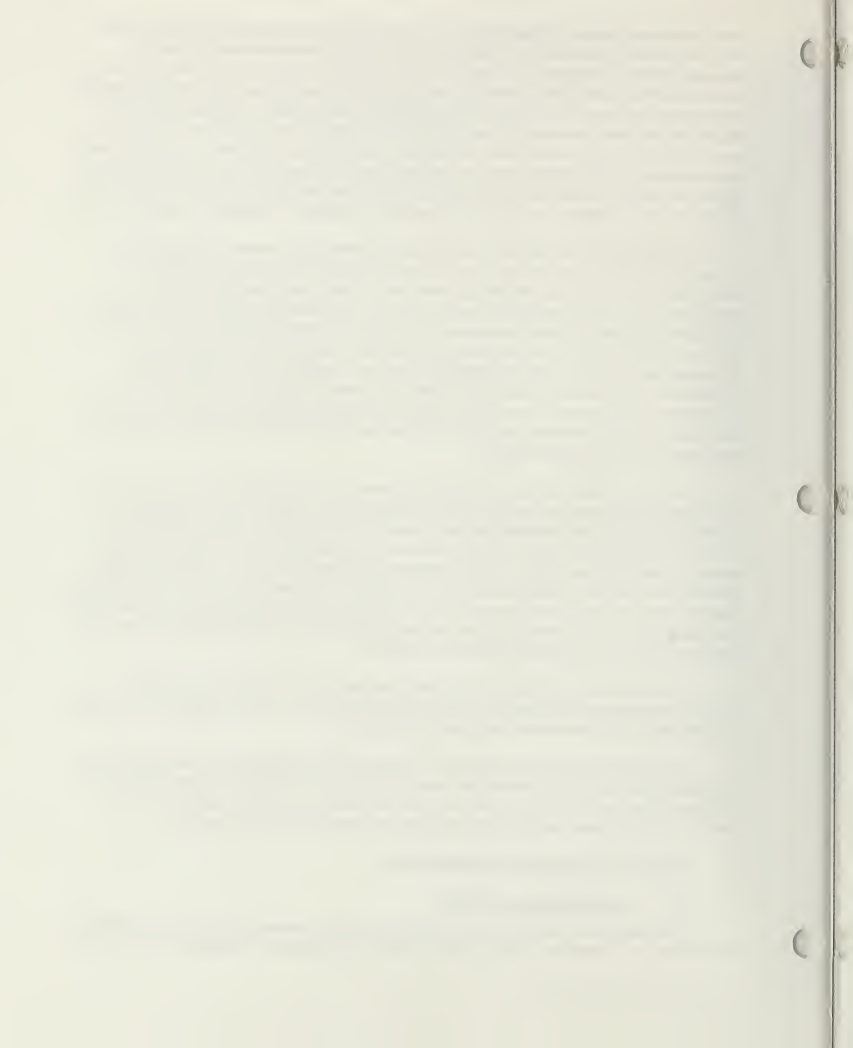
Notwithstanding anything to the contrary contained in this Agreement, all of the foregoing provisions of this Section 3 shall survive any termination of this Agreement, including, without limitation, a termination for default by either party.

Any payment made by the Developer for the Authority's Transaction Costs pursuant to this Section 3.2 shall either be treated as a part of the Developer's Predevelopment Costs or offset against Developer's future rent obligations for the Property, as will be set forth in greater detail in the Term Sheet, and ultimately the DDA or ground lease for the Property.

#### **4. Extension of Exclusive Negotiation Period.**

##### **4.1 6-Month Extension Option.**

The Developer shall have two six (6) month options to extend the Exclusive Negotiation Period (each an "Extension Option"), subject to the consent thereto by the Executive Director of





the Authority as further provided below. The Developer shall exercise each Extension Option by written notice to the Authority on or before the thirtieth (30<sup>th</sup>) day before the end of the initial Exclusive Negotiation Period or the end of an Extension Option period, together with cash or a cashier's check in the amount of Fifty Thousand Dollars (\$50,000) (the "Extension Option Deposit"). The Extension Option Deposit shall be held by the Authority and added to the Earnest Money Deposit and the Performance Deposit if the Executive Director consents to the extension. The Executive Director of the Authority shall consent to the Developer's exercise of the Extension Option if (i) the Developer has paid the Extension Option Deposit in the manner specified above; (ii) the Developer has paid all Transaction Costs due and owing; (iii) the Developer has negotiated in good faith in accordance with this Agreement and the extension is not needed as a result of the Developer's failure to comply with this Agreement; and (iv) at the time of giving the notice of exercise of the Extension Option and at the beginning the term of the Extension Option, the Developer is not in default under this Agreement and no event shall have occurred which, with the giving of notice or the passage of time, or both, would constitute such a default.

#### **4.2 Force Majeure.**

The parties acknowledge that their ability to successfully complete the negotiation of the Transaction Documents is dependent to some extent on certain agreements with third parties, such as agreements with the Navy for the transfer of the Property and the State Lands Commission with respect to the public trust, and may also be dependent on certain Regulatory Approvals and other conditions that are outside of their control. If before the date required for approval of the Transaction Documents set forth in the Schedule of Performance (i) any of such third-party agreements, Regulatory Approvals, or other conditions are not finalized or (ii) any litigation that does not constitute Litigation Force Majeure as defined below is brought by a third party (excluding any action or proceeding brought by an Affiliate of the Developer, any of the Developer's members or their Affiliates, any consultant of the Developer, or any other third party assisted by the Developer, directly or indirectly, in such action or proceeding) and remains outstanding, then the parties agree to attempt in good faith to negotiate the Transaction Documents and enter into them, subject to the terms and conditions of this Agreement, by incorporating provisions in the Transaction Documents that address these matters as conditions precedent to the obligations of the parties and to the close of escrow under the DDA. However, if the parties, despite the Developer having negotiated in good faith in accordance with this Agreement, are unable to meet the required completion date for approval of the Transaction Documents set forth in the attached Schedule of Performance due to Force Majeure or Litigation Force Majeure (as such terms are defined below), then the Developer shall have the right, at its option, to extend the Exclusive Negotiation Period, upon the following terms and conditions.

(a) Definitions. As used in this Section, the following terms shall have the meanings set forth below:

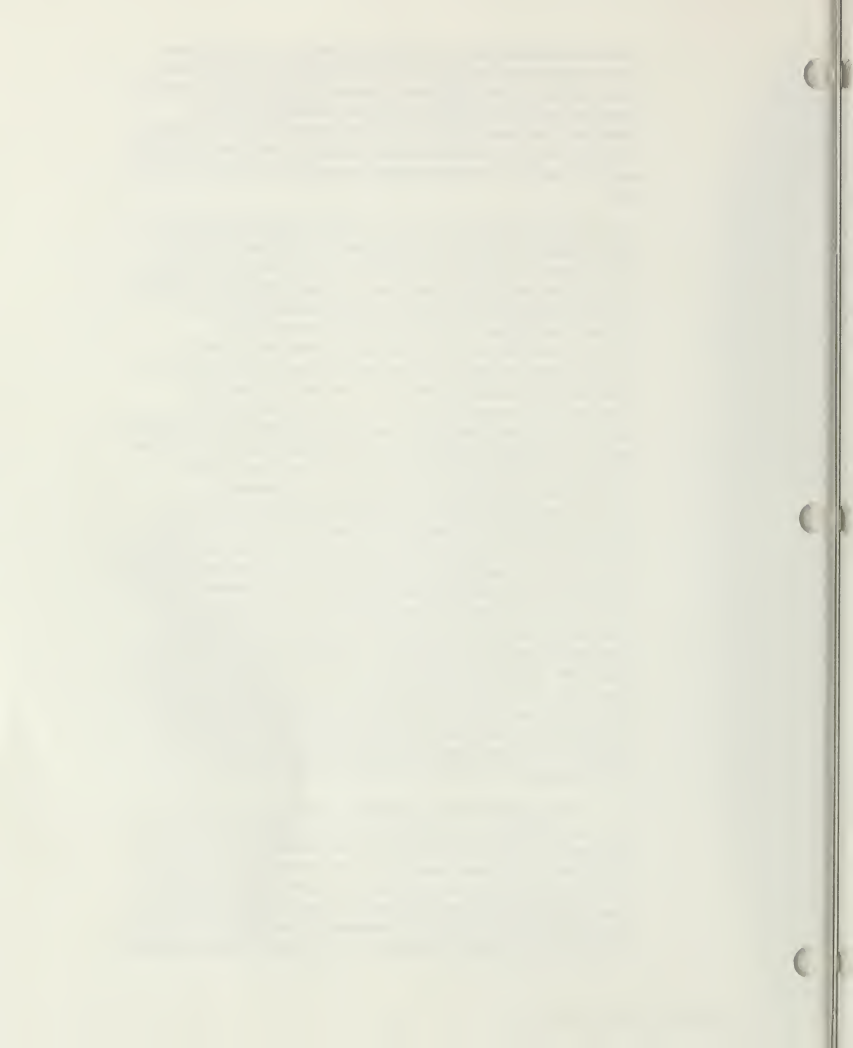
"Force Majeure" means a third-party agreement, Regulatory Approval or other third-party approval, in each case outside of the Developer's control, that has not been obtained or become final and that is so central to the basis of the bargain of the parties under the Transaction Documents that the parties could not reasonably enter into the Transaction



Documents with conditions to the close of escrow, as provided above. Notwithstanding the foregoing, the following shall be excluded from Force Majeure: (1) any third-party agreement or approval with or by the Developer's contractors, agents, consultants, members, executive committee, employees, officers, or any Affiliates of any of the foregoing, (2) the Developer's inability to obtain financing or enter into construction contracts, and (3) any other agreement between the Developer and a third party.

"Litigation Force Majeure" means any action or proceeding before any court, tribunal, or other judicial, adjudicative or legislative decision-making body, including any administrative appeal, brought, for reasons outside of the control of the Developer, by a third party that: (1) seeks to challenge either (a) the validity of any action taken by the City or Authority with respect to the Transaction Documents or the Redevelopment Plan or plan documents, including the Authority's selection of the Developer as the primary developer of the Property, the approval by the Authority and/or the City of any of the proposed Transaction Documents, the performance of any action required or permitted to be performed by the Authority or City hereunder, or under the proposed Transaction Documents, or any findings upon which any of the foregoing are predicated, or (b) the validity of any other Regulatory Approval that is required for the conveyance, management or redevelopment of the Property as contemplated hereby and that is so central to the basis of the bargain of the parties under the Transaction Documents that the parties could not reasonably enter into the Transaction Documents with conditions to the close of escrow, as provided above; and (2) the pendency of such action is reasonably likely to prevent the parties from either entering into the Transaction Documents or satisfying the conditions to the close of escrow set forth therein, such as obtaining financing or Regulatory Approvals on substantially the same terms set forth in the Term Sheet or any substantially final drafts of the Transaction Documents. Notwithstanding the foregoing, Litigation Force Majeure shall exclude any action or proceeding brought by an Affiliate of the Developer, any of the Developer's members or their Affiliates, any consultant of the Developer, or any other third party assisted by the Developer, directly or indirectly, in such action or proceeding.

"Upset Date" means in the case of either an event of Force Majeure or Litigation Force Majeure, twelve (12) months after the end of the Exclusive Negotiation Period; provided, however, that in the event a Litigation Force Majeure event occurs after the date that the final form of the Transaction Documents have been completed and mutually agreed upon by the Developer and the Executive Director of the Authority as set forth in item 4 of the Schedule of Performance, the Upset Date shall mean twenty-four (24) months after the end of the Exclusive Negotiating Period.

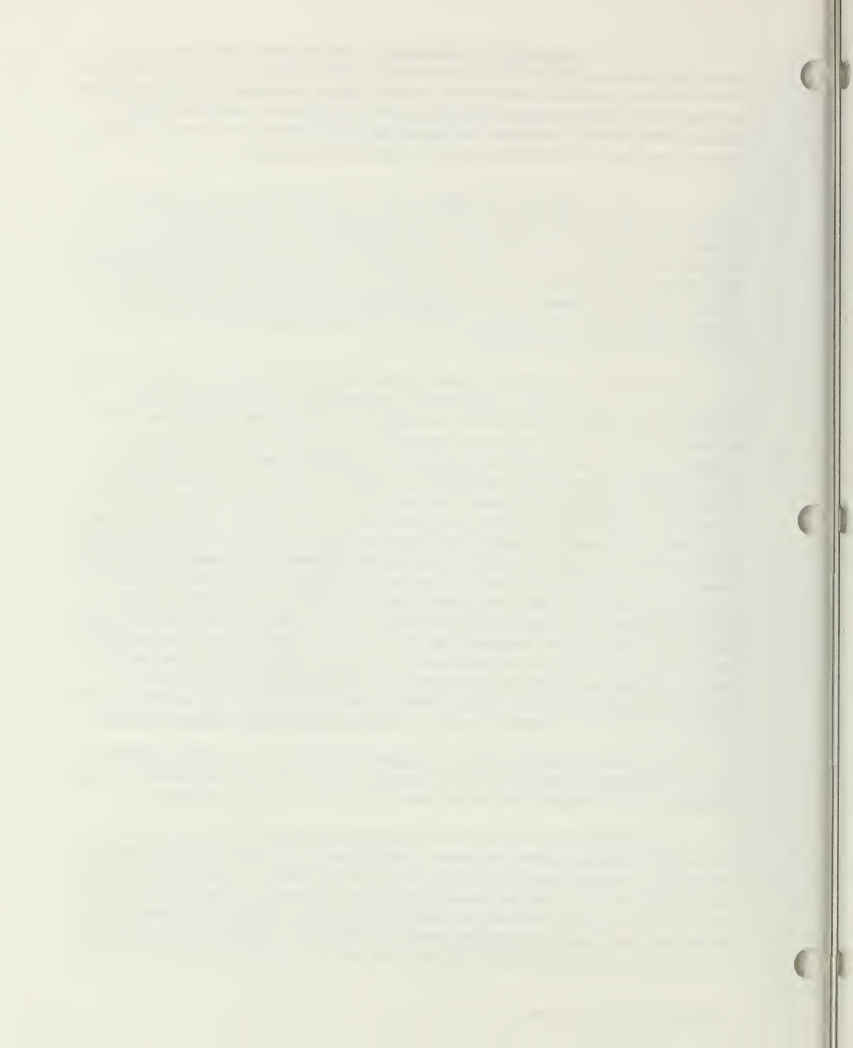


(b) Force Majeure Extension Notice. By the required completion date for approval of the Transaction Documents set forth in the Schedule of Performance, the Developer shall give the Authority written notice of the Developer's election to extend the Exclusive Right (the "Force Majeure Extension Notice"). In the Force Majeure Extension Notice, the Developer shall state in reasonable detail the reason(s) such extension is allowed under the terms of this Agreement and the Developer's good-faith estimate of when the completion of the milestone will occur, which must be on or before the Upset Date. The date for the performance of such milestone shall be extended to the date specified in the Force Majeure Extension Notice under the following circumstances: (1) at the time notice is given and at the beginning of the extension period there is no event of default on the part of the Developer under this Agreement and no event that with the giving of notice or the passage of time, or both, would constitute such a default; (2) the Developer has paid any additional amount for Transaction Costs that the Authority reasonably anticipates will be needed during the extension period; (3) the Authority Board reasonably finds that there is a sufficient basis for the extension for Force Majeure or Litigation Force Majeure in accordance with this Section (subject to the arbitration provisions of subsection (d) below); and (4) in no event shall the date extend beyond the Upset Date.

If the Developer does not give the Force Majeure Extension Notice as provided above, this Agreement shall automatically expire at the end of the Exclusive Negotiation Period.

With respect to any event of Litigation Force Majeure, the parties shall each proceed with due diligence and shall cooperate with one another to defend the action or proceeding or take other measures to resolve the dispute that is the subject of such action or proceeding, provided that the Developer shall pay for the costs of such litigation, including Attorneys' Fees and Costs (as defined in Section 12.6), except to the extent such litigation results from the negligence or willful misconduct of the Authority or the City. Except where such litigation alleges the negligence or willful misconduct of the Authority or the City, the Developer shall, at its option but subject to the reasonable consent and approval of the Authority, be entitled to control the defense, compromise, or settlement of any such Litigation Force Majeure matter through counsel of the Developer's own choice; provided, however, in all cases the Authority and/or the City shall be entitled to participate in such defense, compromise, or settlement at its own expense. If the Developer shall fail, however, within a reasonable time following notice from Authority alleging such failure, to take reasonable and appropriate action to defend such suit or claim, the Authority shall have the right promptly to use its General Counsel, the City Attorney, or to hire outside counsel to carry out such defense, which expense shall be due and payable to the Authority by the Developer within ten (10) business days after receipt by the Developer of an invoice therefor. Such litigation expenses shall be considered entitlement costs under Section 3.2(a) of this Agreement.

If the Exclusive Negotiations Period is extended due to Force Majeure or Litigation Force Majeure, nothing herein shall limit the right of the parties from diligently negotiating in good faith, subject to the provisions of this Agreement, any change to the proposed business terms of the Transaction Documents that such party determines in good faith is needed as a result of the outcome of such event of Force Majeure or Litigation Force Majeure or of a change in circumstances resulting from such extension.



and the Authority may each make supplemental oral and/or written presentations, with an opportunity for testimony by the experts and questioning by the parties and the arbitrator. Within ten (10) business days following the hearing, the arbitrator shall render his or her decision. The arbitrator shall have no right to modify any provision of this Agreement. In no event shall the hearing be held later than forty-five (45) days after the selection of the arbitrator.

Except as provided in California Code of Civil Procedure Section 1286.2 (as the same may be amended from time to time), the determination by the estimators or the arbitrator, as applicable, shall be conclusive, final, and binding on the parties. Neither the estimators nor the arbitrator shall have any power to modify any of the provisions of this Agreement. Subject to the provisions of this Section, the parties will cooperate to provide all appropriate information to the arbitrator. The arbitrator will each report his or her determination in writing. Such determination shall be consistent with the provisions of this Agreement and shall be supported by the reasons for the determination.

Any arbitration proceeding under this Section shall be subject to California Code of Civil Procedure Sections 1280 to 1294.2 (but excluding Section 1283.05 with respect to discovery) or successor California laws then in effect relating to arbitration generally. Any such proceeding shall be conducted in the City and County of San Francisco in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

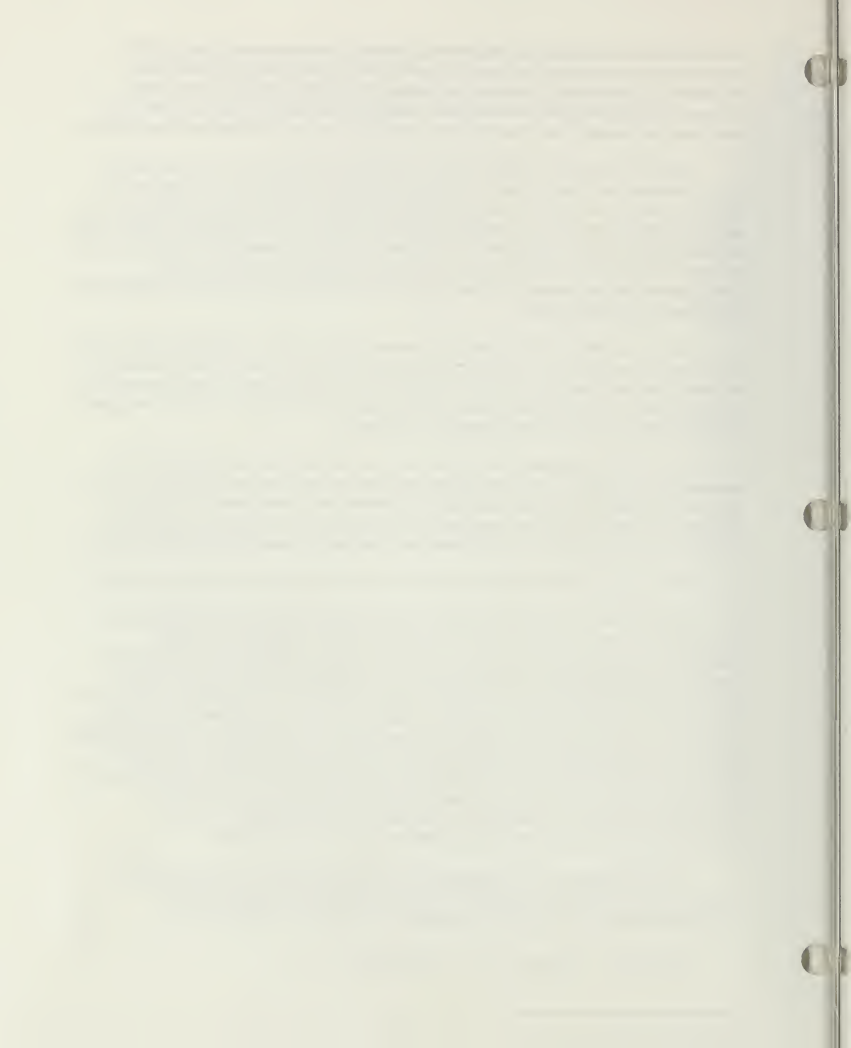
The fees and expenses of the arbitrator and the costs and expenses of the arbitration proceeding, if any, shall be borne by the party that does not prevail in such arbitration, or if it is not clear which party prevailed, the arbitrator may determine the responsibility for fees and expenses. The parties waive any claims against the arbitrator, for negligence, malpractice, or similar claims in the performance of the estimates or arbitration contemplated by this Section.

With respect to the arbitration provided for in this Section, the parties agree as follows:

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISIONS IN THIS AGREEMENT DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

INITIALS: Authority \_\_\_\_\_ Developer \_\_\_\_\_





Any judgment upon the award rendered by the arbitration may be entered in any court having jurisdiction of such arbitration in accordance with the terms of this Agreement. This arbitration provision does not affect the rights of either Party to seek confirmation, correction or vacation of the arbitration award pursuant to California Code of Civil Procedure Section 1285 et seq.

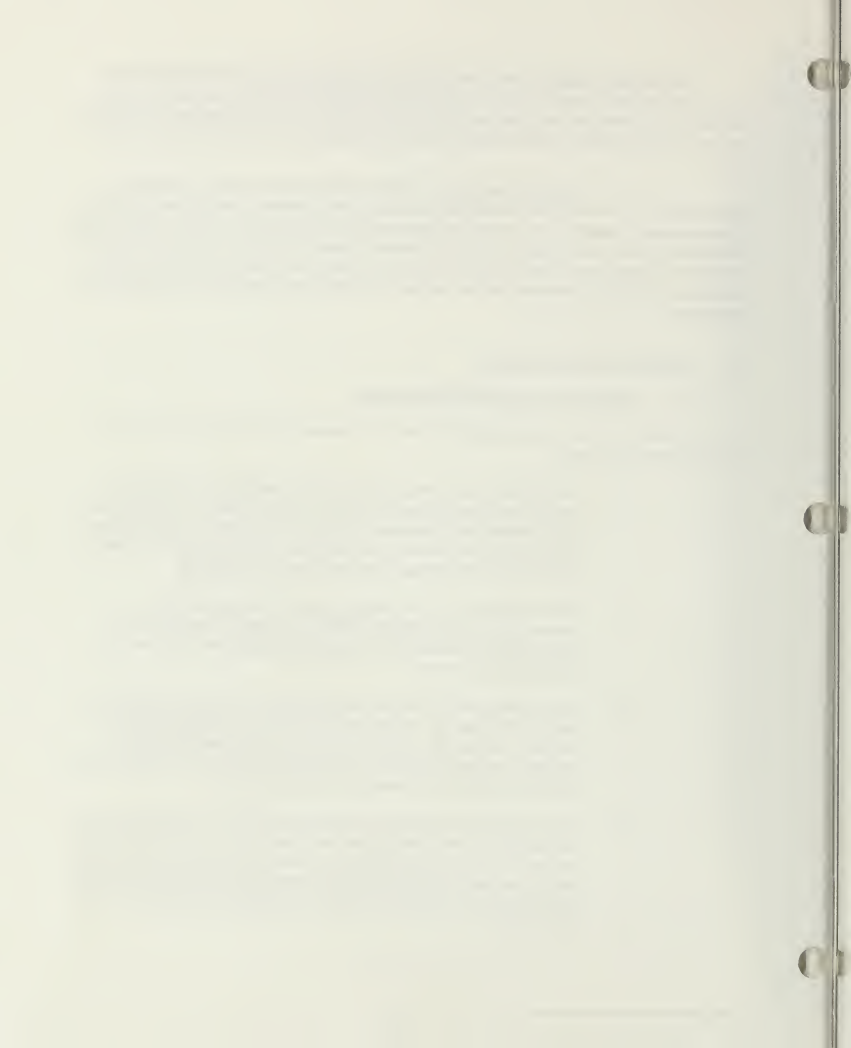
(c) No Further Extensions. Under no circumstances shall an extension attributable to an event of Force Majeure or Litigation Force Majeure extend beyond the Upset Date unless such limitation is expressly waived in writing by both parties, in their respective sole and absolute discretion, and approved by the Authority Board, in its sole and absolute discretion. Nothing in Section 4 shall limit the parties' respective rights and remedies (including, without limitation, their right to terminate) in the event of a default by the other party as provided in this Agreement.

## **5. Obligations of the Developer.**

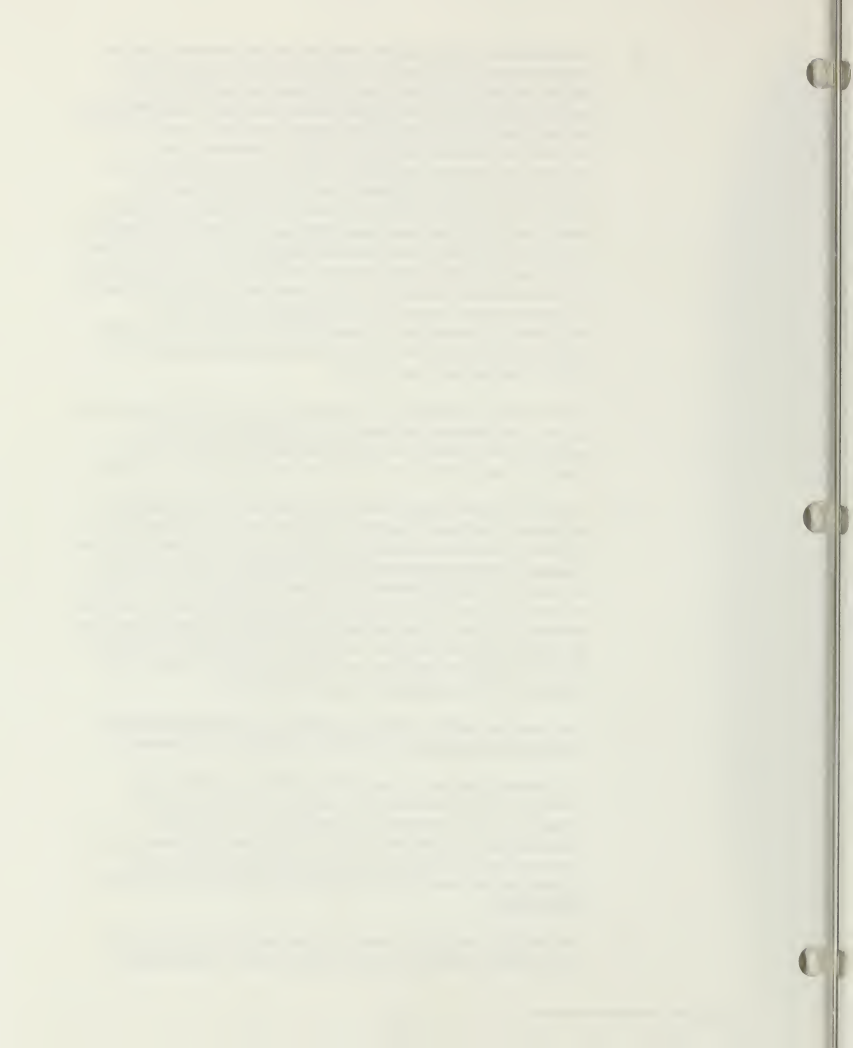
### **5.1 Obligations; Schedule of Performance.**

In addition to any other obligations under this Agreement, the Developer agrees that it shall perform the following:

- (a) The Developer shall use good-faith efforts to diligently negotiate the Transaction Documents and cooperate in the preparation and submission of the Transaction Documents for approval. In doing so, the Developer shall meet the performance milestones on or before the dates set forth in the Schedule of Performance attached hereto as Exhibit B.
- (b) Under the direction of the Authority, the Developer shall work cooperatively with the TICAB, TIHDI, and other community-based organizations to ensure broad community participation in review of the Transaction Documents.
- (c) The Developer shall assist the Authority and the City in the negotiations with the Navy for the conveyance of the Property, provided that the Authority and the City shall be the lead in such negotiations and the Developer shall work under the direction and control of the Authority and the City at all times with respect to such negotiations.
- (d) The Developer shall assist the Authority and the City in the negotiations with the State Lands Commission for the exchange of public trust interests within the Property, provided that the Authority and the City shall be the lead in such negotiations and the Developer shall work under the direction and control of the Authority and the City at all times with respect to such negotiations.



- (e) In cooperation with the Authority and the City, the Developer shall use good-faith efforts to diligently pursue all authorizations, approvals or permits required by any local, state, or federal governmental agency having jurisdiction over the Property for the conveyance, management and redevelopment of the Property ("Regulatory Approvals"), including, but not limited to, approvals of Caltrans, the Bay Conservation and Development Commission (BCDC), the State Lands Commission, the EPA, the Army Corps of Engineers, the DTSC, the Regional Water Quality Control Board (RWQCB), and the City's Department of Public Health, Public Utilities Commission, Planning Commission, Department of Public Works, and Department of Building Inspection. The Developer shall not seek any Regulatory Approvals without first obtaining the prior written approval of the Authority. In the event the Authority approves the Developer's request to seek any such Regulatory Approvals, the Developer shall, throughout the permit process, consult and coordinate with the Authority and shall at all times work under the direction and control of the Authority and the City.
- (f) At the request of the Authority and/or the City and at the Developer's sole expense, the Developer shall prepare (or cause expert consultants approved by the Authority to prepare) and submit all reports, studies or other information reasonably necessary to obtain Regulatory Approvals.
- (g) The Developer shall comply with the requirements of all applicable City and Authority ordinances, resolutions, regulations, or other Regulatory Approvals in all aspects (planning, design, construction, management, and occupancy) of redeveloping the Property, including, without limitation, the Authority's Equal Opportunity Program (including, but not limited to, the selection of consultants during the pre-development period), Business Preference Program, Labor Standards and Prevailing Wages Program, and the TIHDI Job Broker Program. In addition, the Developer shall adhere to the City's Employee Signature Card Ordinance to the extent that such ordinance would be applicable to uses in the Property.
- (h) The Developer shall not violate any applicable agreements between the City and/or the Authority and the Navy with respect to the Property.
- (i) The Developer shall pay or cause to be paid all costs related to the Developer's obligations under this Agreement, including, without limitation, all costs associated with applying for, obtaining and maintaining any necessary or appropriate Regulatory Approvals, and all costs associated with satisfying any and all conditions imposed by regulatory agencies as part of any Regulatory Approvals as provided in Section 3.2(a).
- (j) The Developer shall pay or cause to be paid certain Transaction Costs incurred by the Authority and the City as provided in Section 3.2(b).



- (k) In making any entry onto the Property, neither the Developer nor any of its agents, contractors, or representatives shall interfere with or obstruct the permitted, lawful use of the Property by its tenants or occupants, or the conduct of their business operations thereon, nor shall the Developer interfere with the investigation or remediation of Hazardous Materials on the Property by the Navy or subject to Section 5.2 cause a release of any such Hazardous Materials (except for any such testing as may be permitted by the Navy in writing), and the Developer and its agents, contractors and representatives shall comply with all requirements of the Navy applicable to the City and the Authority for the Property.
- (l) The Developer shall provide periodic updates to the public about the implementation of the project according to the Project Guidelines and the Developer's proposals for redevelopment of the Property, or portions thereof, including, without limitation, presentations to the community and the public in connection with the milestones described in the Schedule of Performance attached as Exhibit B.
- (m) The Developer shall commit sufficient financial and personnel resources required to undertake and complete the Property as a priority project and to fulfill the Developer's obligations under this Agreement in an expeditious fashion.
- (n) Every six (6) months from the Effective Date of this Agreement, the Developer shall provide the Authority with a written report (in a form mutually agreeable to the Authority and the Developer) detailing the amount and nature of its Predevelopment Costs, cumulatively and for the previous three-month period

## **5.2 Indemnity.**

The Developer shall indemnify, protect, defend and hold harmless the Authority and the City, including, but not limited to, all of their boards, commissions, departments, agencies and other subdivisions, including, without limitation, all of the agents, contractors, and representatives of the City and the Authority, and their respective heirs, legal representatives, successors, and assigns, and each of them (the "Indemnified Parties") from and against any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits, and other proceedings, judgments, awards, costs, and expenses (including, without limitation, reasonable Attorneys' Fees and Costs and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise ("Losses") to the extent arising out of: (i) the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person that may occur on or adjacent to the Property and that may be caused by any acts or omissions of the Developer or its agents, contractors, or representatives, (ii) any default by the Developer in the observation or performance of any of the terms, covenants, or conditions of this Agreement to be observed or performed on the Developer's part, (iii) the entry by Developer, its agents, contractors, representatives, or invitees or any person claiming through



or under any of them, upon the Property, and (iv) any release of Hazardous Materials (as defined below) on or about the Property caused by the Developer or its agents, contractors, or representatives; except only to the extent of Losses resulting from the negligence or willful misconduct of any of the Indemnified Parties. For purposes hereof, "Hazardous Material" means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," "pollutant," or "contaminant" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or under Section 25281 or 25316 of the California Health & Safety Code; any "hazardous waste" as defined in Section 25117 or listed under Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Property, or are naturally occurring substances on, in or about the Property; and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

The foregoing indemnity is subject to the following terms and conditions:

- (a) The indemnity shall include, without limitation, reasonable Attorney's Fees and Costs (as defined in Section 12.6) and fees of consultants and experts, laboratory costs, and related costs, as well as the Indemnified Party's costs of investigating any Loss.
- (b) The Developer agrees to defend the Indemnified Parties against any claims, which are actually or potentially within the scope of the indemnity provisions of this Agreement even if such claims may be groundless, fraudulent or false. The Authority or the other Indemnified Party against whom any claim is made, which may be within the scope of the indemnity provisions of this Agreement, shall provide notice to the Developer of such claim within a reasonable time after learning of such claim, and thereafter shall cooperate with the Developer in the defense of such claim, provided that any failure to provide such notice shall not affect Developer's obligations under any such indemnity provisions except to the extent the Developer is prejudiced by such failure.
- (c) The insurance requirements and other provisions of any permit to enter or other agreement with the Authority shall not limit the Developer's indemnification obligations under this Agreement.
- (d) The indemnification obligations of the Developer set forth in this Agreement shall survive any termination of this Agreement as to any acts or omissions occurring prior to such date.
- (e) The agreement to indemnify set forth in this Agreement is in addition to, and in no way shall be construed to limit or replace, any other obligations





or liabilities which the Developer may have to the Authority in this Agreement, any permit to enter, or applicable law.

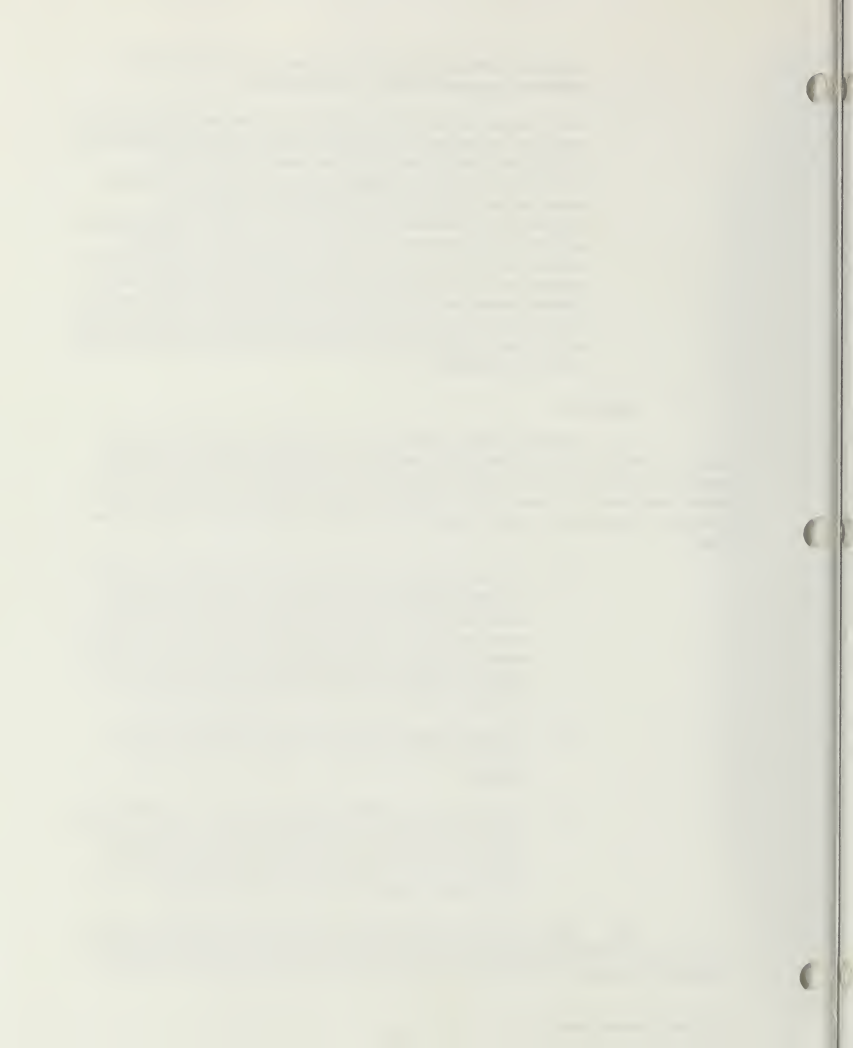
- (f) The Developer shall, at its option but subject to the reasonable consent and approval of the Authority, be entitled to control the defense, compromise, or settlement of any indemnified matter through counsel of the Developer's own choice; provided, however, in all cases the Authority and/or the City shall be entitled to participate in such defense, compromise, or settlement at its own expense. If the Developer shall fail, however, within a reasonable time following notice from Authority alleging such failure, to take reasonable and appropriate action to defend such suit or claim, the Authority shall have the right promptly to use its General Counsel, the City Attorney, or to hire outside counsel to carry out such defense, which expense shall be due and payable to the Authority by the Developer within ten (10) business days after receipt by the Developer of an invoice therefor.

### 5.3 Insurance.

(a) Required Coverage. The Developer, at no cost to the Authority, shall procure and keep in effect at all times during the Exclusive Negotiation Period, as it may be extended, the following insurance against claims for injuries to persons or damages to property that may arise from or in connection with work performed pursuant to this Agreement by the Developer, its representatives, agents, employees, consultants, subcontractors, or joint venture partners:

- (1) Commercial general liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than One Million Dollars (\$1,000,000)), personal injury, products and completed operations, explosion, collapse, and underground (XCU).
- (2) Worker's Compensation Insurance with Employer's Liability limits not less than One Million Dollars (\$1,000,000) each accident.
- (3) Comprehensive automobile liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, if the Developer uses automobiles in connection with its use of the Property.

(b) Term. Should any of the required insurance be provided under a claims-made form, the Developer shall maintain such coverage continuously throughout the Exclusive Negotiation Period and, without lapse, for a period of three (3) years beyond the expiration or



termination of such period, to the effect that, should occurrences during the Exclusive Negotiation Period give rise to claims made after expiration or termination of this Agreement, such claims shall be covered by such claims-made policies.

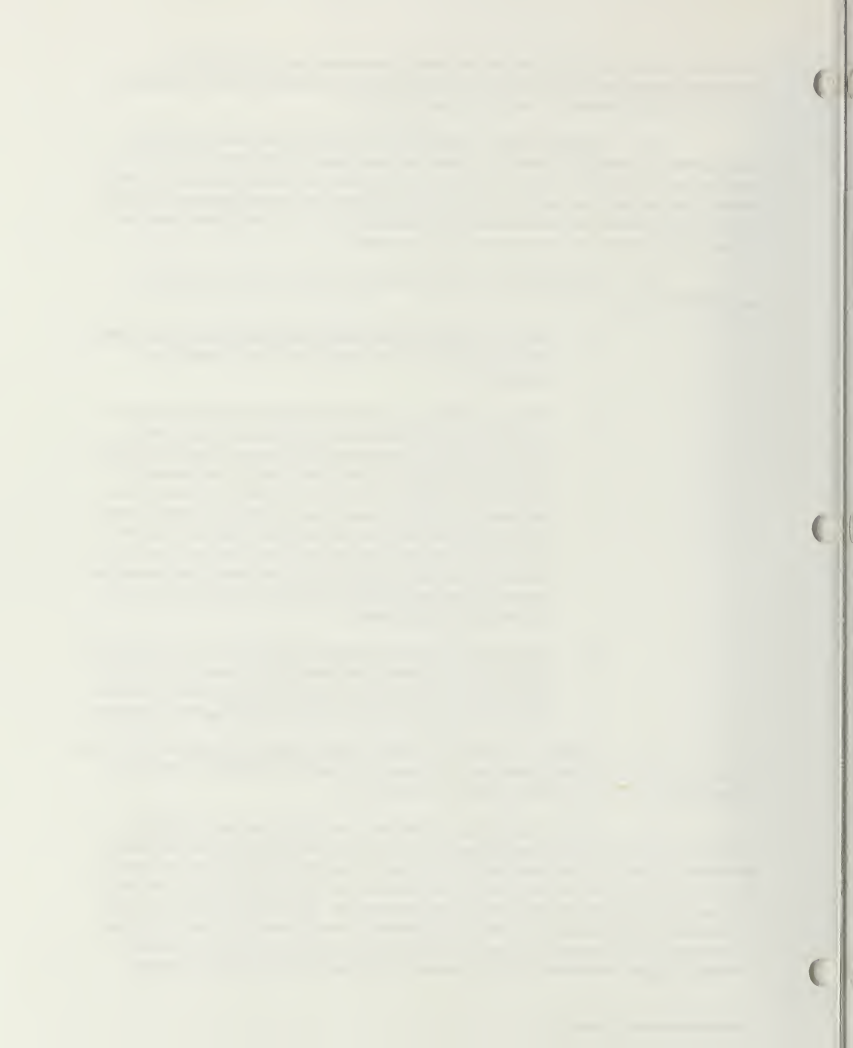
(c) Aggregate Limits. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, either the general aggregate limit must apply separately to this project or the general aggregate limit shall be twice the required occurrence or claims limits specified above. The obligations under this subsection shall survive any termination of this Agreement.

(d) Endorsements. All liability insurance policies shall be endorsed to provide the following:

- (1) Name as additional insured the Authority and the City and County of San Francisco, and their respective officers, agents, and employees.
- (2) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any other insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.
- (3) Provide thirty (30) days' advance written notice to the Authority of cancellation, non-renewal, or reduction in coverage (or ten (10) days' advance written notice in case of nonpayment of premium), mailed to the address for the Authority set forth in this Agreement.

(e) Insurers. Each insurance policy required under this Section shall be issued by an insurance company duly authorized to do business in the State of California and with a current rating of A.VIII or better by Bests Key Rating Guide.

(f) Evidence of Coverage. The Developer shall deliver to the Authority certificates of insurance in form satisfactory to the Authority, evidencing the coverage required hereunder, together with complete copies of the policies promptly upon the Authority's request. The Developer shall provide the Authority with certificates or policies thereafter at least ten (10) business days before the expiration dates of expiring policies. In the event the Developer shall fail to procure such insurance or to deliver such policies or certificates, the Authority may upon not less than five (5) business days' notice to the Developer, procure, at its option, without waiving any rights or remedies which the Authority may have for the Developer's default



hereunder, the same for the account of the Developer, and the cost thereof shall be paid to the Authority within five (5) business days after delivery to the Developer of bills therefor.

(g) No Limitation on Other Obligations. The Developer's compliance with the provisions of this Section shall in no way relieve or decrease the Developer's other obligations under this Agreement. In addition, nothing in this Section or in Section 5.2 shall limit the obligation of the Developer under Section 6(d) below to procure and maintain such insurance or provide such indemnification as the Authority may require for a permit to enter any portion of the Property now or later owned, leased, or otherwise controlled by the Authority, nor shall anything in this Section or in Section 5.2 be deemed to limit the insurance coverage or indemnification that the Authority may require under the Sublease or any other Transaction Documents.

(h) Review. The insurance coverage required under this Section shall be evaluated by the Authority and the Developer for adequacy if and when the Exclusive Negotiations Period is extended beyond the initial eighteen (18)-month period or for any event of Force Majeure or Litigation Force Majeure. Following consultation with the Developer, the Authority may, upon not less than ninety (90) days' prior written notice, require the Developer to increase the insurance limits and/or forms of coverage if in the reasonable judgment of the Authority's Risk Manager it is the general commercial practice in San Francisco or in other cities or counties around the country to carry insurance for property similar to the Property in amounts substantially greater than the amounts or forms carried by the Developer with respect to risks comparable to those associated with the Developer's rights under this Agreement. If the Authority's Risk Manager determines that insurance limits and/or forms required under this Section may be decreased in light of such commercial practice and the risks associated with this Agreement, the Authority shall notify the Developer of such determination, and the Developer shall have the right to decrease the insurance coverage and/or forms required under this Agreement accordingly. In such event, the Developer shall promptly deliver to the Authority a certificate evidencing such new insurance amounts and/or forms.

## **6. Obligations of the Authority.**

Subject to the provisions of Section 8, the Authority agrees as follows:

- (a) Subject to environmental review under CEQA, the public review process and all required governmental approvals, as further provided in this Agreement, the Authority shall use good-faith efforts to diligently negotiate, prepare, and submit for approval the Transaction Documents.
- (b) The Authority shall make available non-privileged studies and other documents in the Authority's possession as necessary to perform the Developer's due diligence investigations of the Property, provided that the Authority makes no representations or warranties whatsoever regarding the completeness or accuracy of such information and the Developer must perform its own independent analysis.



- (c) The Authority shall provide information to the Developer regarding the negotiations by the City and/or the Authority with the Navy, Caltrans, State Lands Commission and any other regulatory agencies that could affect the conveyance, management or redevelopment of the Property and shall provide the Developer with an opportunity for input, subject to the provisions of Sections 5.1(c), (d), and (e).
- (d) The Authority shall reasonably cooperate with the Developer in obtaining and providing access to the Property for the purpose of performing tests, surveys, and inspections and obtaining data necessary or appropriate to negotiate the Transaction Documents and obtain Regulatory Approvals; provided, however, the Developer shall give prior written notice to the Authority of any such entry and shall, if the Authority or the Navy so requires, obtain a permit to enter from the Authority and/or the Navy for such entry and comply with such insurance and indemnification requirements as the Authority and/or the Navy may impose with respect to such inspections. In the case of invasive tests under any permit to enter granted by the Authority, the Authority may impose such insurance, indemnification, guaranty and other requirements as the Authority determines appropriate, in its sole discretion. The Authority shall provide the Developer with the same rights of access to the Property that the Authority may have from time to time during the Exclusive Negotiation Period, subject to the Navy's consent and all applicable laws and regulations.
- (e) The Authority shall reasonably cooperate with the Developer in the provision of information and assistance in the filing, processing and obtaining of Regulatory Approvals and, to the extent required by law, join with the Developer as a co-applicant in the filing for such Regulatory Approvals, but neither the Authority nor the City shall be required to satisfy any conditions for any Regulatory Approval, except as may be specifically provided in the Transaction Agreements and agreed to by the Authority or the City, as applicable, in its respective sole and absolute discretion.
- (f) In making any entry onto the Property, neither the Authority nor any of its agents, contractors, or representatives shall interfere with or obstruct the permitted, lawful use of the Property by its tenants or occupants, or the conduct of their business operations thereon, nor shall the Authority interfere with the investigation or remediation of Hazardous Materials on the Property by the Navy or cause a release of any such Hazardous Materials (except for any such testing as may be permitted by the Navy in writing).
- (g) Every six (6) months from the Effective Date of this Agreement, the Authority shall provide the Developer with a written report (in a form mutually agreeable to the Authority and the Developer) detailing the





amount and nature of its Predevelopment Costs, cumulatively and for the previous three-month period

## **7. Non-Assignment.**

### **7.1 Definitions.**

For purposes of this Section and where such initially capitalized terms are elsewhere used in this Agreement, the following terms shall have the meaning given below:

“Affiliate” means any person that directly or indirectly Controls, is Controlled by or is under Common Control with, the Developer (or a Permitted Member of the Developer, as the case may be).

“Control” means the ownership (direct or indirect) by one Person of (i) twenty-five percent (25%) or more (or if such Person is not publicly traded fifty percent (50%) or more) of each class of equity interests (including rights to acquire such interests), or (ii) twenty-five percent (25%) or more (or if such Person is not publicly traded fifty percent (50%) or more) of each class of interests that have a right to nominate, vote for, or otherwise select the members of the board or other governing body that directs or causes the direction of substantially all of the management and policies of that Person. “Controlled,” “Controlling Interest” and “Controlling” have correlative meanings. “Common Control” means that two Persons are both Controlled by the same other Person.

“Permitted Members” means Kenwood Investments, Lennar Corporation, and Interland, and any Affiliates thereof, and any new member of the Developer approved by the Authority.

“Person” means any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture, or any other entity or association, the United States, or federal, state or political subdivision thereof.

“Significant Change” means any dissolution, merger, consolidation or other reorganization, or any issuance, sale, assignment, hypothecation, or other transfer of legal or beneficial interests in the Developer, directly or indirectly, in one or more transactions, that results in any of the following: (1) a change in the identity of Persons Controlling the Developer or any Permitted Member, (2) the admission of any new member that has the right to exercise management or control over the business of the Developer, other than Permitted Members, (3) the dissolution of the Developer or any Permitted Member, (4) the sale of fifty percent (50%) or more of the Developer’s assets, capital, or profits or of the assets, capital, or profits of any Person Controlling any Permitted Member, except to an Affiliate of a Permitted Member.



## **7.2 Non-Assignment.**

(a) Exclusive Right is Personal to the Developer; Authority Approval of any Assignment or Significant Change. The Authority and the Developer acknowledge and agree that the Authority is entering into this Agreement and granting the Exclusive Right to the Developer on the basis of the particular experience, financial capacity, skills and capabilities of the Developer and its Permitted Members. The Exclusive Right is personal to the Developer and is not assignable and no Significant Change may occur under any circumstance (whether by agreement or operation of law) without the prior written consent of the Authority, which, except as specifically set forth in Section 7.2(b) below, may be given, withheld or conditioned in the Authority's sole and absolute discretion. Absent the required approvals set forth in this Section 7.2, any attempted assignment of this Exclusive Right, or a Significant Change, at the Authority's option, shall be considered an event of default under this Agreement if such default is not cured within thirty (30) days after the Authority gives written notice to the Developer.

(b) Notice and Approval of Change in Permitted Members. Subject to Section 9.1(a) below, any change in the (i) the identity of the Permitted Members of the Developer or (ii) the Controlling Interest of any Permitted Member (either, a "Constituent Change"), shall be subject to the prior written approval of the Authority, which approval shall not be unreasonably withheld or delayed. For purposes of this Section 7.2(b), it shall be reasonable for the Authority to refuse to approve a Constituent Change if the Developer fails to demonstrate that, after such Constituent Change, the Permitted Members of Developer will have at least the same level of skill, development experience, financial capabilities and other relevant characteristics as the Permitted Members possess as of the Effective Date of this Agreement, based on the criteria set forth in the RFQ and the qualitative evaluations of Developer's response to the RFQ prepared by the Authority's staff and its consultant's. Without limiting any other provision of this Agreement, if at any time and from time to time after the date of this Agreement there is any Constituent Change that the Authority has not previously approved in writing as set forth herein, then the Authority may, with the approval of the Authority Board following a public meeting, terminate this Agreement in the event that the Authority Board does not approve such Constituent Change. If the Authority terminates this Agreement as provided above, the Authority may retain the Deposits, including any interest thereon, in accordance with Section 3.1.

## **8. Default and Remedies.**

### **8.1 Events of Default by the Developer.**

The occurrence of any of the following shall constitute an event of default on the part of the Developer after the Authority gives notice of the default specifying in reasonable detail the basis for the determination of the default:

- (a) Failure to pay any sums due under this Agreement within fifteen (15) days after written notice by the Authority.
- (b) Failure to negotiate diligently or in good faith or to perform or abide by any other provision of this Agreement (including, without limitation, any failure to meet a performance milestone contained in the Schedule of



## 7.2 Non-Assignment.

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(b) Notice and Approval of Change in Permitted Members. Subject to Section 9.1(a) below, any change in the (i) the identity of the Permitted Members of the Developer or (ii) the Controlling Interest of any Permitted Member (either, a "Constituent Change"), shall be subject to the prior written approval of the Authority, which approval shall not be unreasonably withheld or delayed. For purposes of this Section 7.2(b), it shall be reasonable for the Authority to refuse to approve a Constituent Change if the Developer fails to demonstrate that, after such Constituent Change, the Permitted Members of Developer will have at least the same level of skill, development experience, financial capabilities and other relevant characteristics as the Permitted Members possess as of the Effective Date of this Agreement, based on the criteria set forth in the RFQ and the qualitative evaluations of Developer's response to the RFQ prepared by the Authority's staff and its consultants. Without limiting any other provision of this Agreement, if at any time and from time to time after the date of this Agreement there is any Constituent Change that the Authority has not previously approved in writing as set forth herein, then the Authority may, with the approval of the Authority Board following a public meeting, terminate this Agreement in the event that the Authority Board does not approve such Constituent Change. If the Authority terminates this Agreement as provided above, the Authority may retain the Deposits, including any interest thereon, in accordance with Section 3.1.

## 8. Default and Remedies.

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- (a) Failure to pay any sums due under this Agreement within fifteen (15) days after written notice by the Authority.
- (b) Failure to negotiate diligently or in good faith or to perform or abide by any other provision of this Agreement (including, without limitation, any failure to meet a performance milestone contained in the Schedule of



Performance) if such failure is not cured within thirty (30) days after the Authority gives written notice to the Developer.

- (c) Any material breach of any representation and warranty made by the Developer under Section 9 or any other provision of this Agreement.
- (d) Any assignment, attempted assignment, or Significant Change in violation of Section 7.2.
- (e) Either (i) the filing by the Developer of a petition to have the Developer or any Permitted Member adjudicated insolvent and unable to pay its debts as they mature or a petition for reorganization or arrangement under any bankruptcy or insolvency law, or a general assignment by the Developer or any Permitted Member for the benefit of creditors, or (ii) the filing by or against the Developer or any Permitted Member of any action seeking reorganization, arrangement, liquidation, or other relief under any law relating to bankruptcy, insolvency, or reorganization or seeking appointment of a trustee, receiver, or liquidator of the Developer or any Permitted Member or any substantial part of the Developer's or any Permitted Member's assets, if such petition is not dismissed within sixty (60) days.
- (f) The debarment or prohibition of the Developer or any Permitted Member from doing business with any relevant federal, state, or local governmental authority.
- (g) Failure to procure or maintain any of the insurance coverage required hereunder so that there is a lapse in required coverage.

## **8.2 Remedies of the Authority.**

(a) Remedies. In the event of a default by the Developer, the Authority may terminate this Agreement and the Exclusive Right upon written notice to the Developer following any applicable cure period under this Agreement; provided, however, the Authority may terminate this Agreement for default only after the Authority Board holds a noticed public meeting regarding such matter. This remedy is not exclusive, but shall be cumulative with any and all rights and remedies now or later provided under this Agreement or the Guaranty, or by law or in equity. Upon any such termination, the Authority shall have the right to retain the Deposits and all interest accrued thereon, and neither party shall have any further rights or obligations to the other under this Agreement except as provided herein (including, without limitation, the obligation to pay all accrued but unpaid Transaction Costs). Notwithstanding anything to the contrary contained herein, any damages remedy by the Authority against the Developer under this Agreement shall be limited to actual damages, excluding consequential and incidental damages.

(b) Reports and Studies. Developer shall make commercially reasonable efforts to include in all contracts related to the preparation of any Reports (as defined below), provisions that would allow such Reports to be assigned to the Authority automatically in the





event of termination of this Agreement. If the Authority terminates this Agreement, then subject to the proprietary rights of their authors and any confidentiality agreements and privileges recognized by applicable law, the Developer shall deliver to the Authority copies of any and all reports, studies, document lists, and plans regarding the redevelopment of the Property in the Developer's possession or prepared by or on behalf of the Developer (collectively, the "Reports"). The Developer shall deliver such documents within thirty (30) days after written demand from the Authority, which obligation shall survive the termination. The Authority may use those documents for any purpose relating to the Property, provided that the Authority shall execute a commercially reasonable indemnification agreement satisfactory to the Authority whereby the Authority agrees to release and indemnify the Developer and the Developer's contractor, architect, engineer, and other consultants from any Losses arising out of the Authority's use of such documents except to the extent that the Authority retains any of them and they agree to such continued liability.

(c) Non-Liability of Directors and Officers of the Developer. No director, officer, agent or employee of the Developer or of any Permitted Member will be personally liable to the Authority in an event of default by the Developer or for any amount that may become due to the Authority or on any obligations under the terms of this Agreement. No Permitted Member of Developer shall be individually liable to the Authority for any default by the Developer under this Agreement except as set forth in the Guaranty.

#### **8.3 Defaults by the Authority.**

If the Authority fails to negotiate diligently or in good faith or to perform any of its other obligations under this Agreement, the Developer may give written notice thereof to the Authority specifying in reasonable detail the basis for the determination of the default. Upon such notice, the Authority shall not be in default under this Agreement if the Authority cures such failure within thirty (30) days after the date the notice of default was given. If the default cannot reasonably be cured within thirty (30) days, then the Authority shall not be in default under this Agreement if the Authority commences to cure the default within the thirty (30)-day period and diligently and in good faith continues to cure the default; provided, however, in no event shall the cure period extend beyond the later of (i) nine (9) months after the date the notice of default was given or (ii) expiration of the Exclusive Negotiation Period.

#### **8.4 Remedies of the Developer.**

(a) Termination. In the event of a default by the Authority, the Developer may, at its sole option, terminate this Agreement upon written notice to the Authority following any applicable cure period under this Agreement. Subject to the limitations set forth below, this remedy is not exclusive, but shall be cumulative with any and all rights and remedies now or later provided under this Agreement or by law or in equity. Upon any such termination, the Authority shall return the Deposits (with any interest actually paid thereon as herein provided) and neither party shall have any further rights or obligations to the other under this Agreement except as provided herein.

(b) Non-liability of Authority/City Officials. No member, official, agent, or employee of the Authority or the City will be personally liable to the Developer, or any



successor in interest (if and to the extent permitted under this Agreement), in an event of default by the Authority or for any amount that may become due to the Developer or successor or on any obligations under the terms of this Agreement.

(c) Limitation on Damages Against the Authority. The Authority shall not be liable in damages to the Developer and the Developer waives its right to sue the Authority for damages; provided, however, (1) actual damages only (excluding consequential, incidental or other damages) shall be available as to defaults that arise out of the failure by the Authority to pay any monetary fee or reimbursement required to be paid under this Agreement or due under any indemnity, (2) actual damages only (excluding consequential, incidental or other damages) limited to substantiated out-of-pocket expenses actually and reasonably incurred by the Developer and in amounts not exceeding arms-length, market rates (with any transactions involving Affiliates specifically disclosed) shall be available to the Developer in the event that the Authority willfully and without good faith belief in an adequate basis therefor under this Agreement breaches any of the Authority's material obligations under this Agreement (and the Authority fails to cure such breach after the end of the applicable cure period) in order to begin negotiations with another developer in violation of this Agreement and (3) nothing herein shall limit the Developer's equitable remedy of specific performance or to terminate this Agreement under subsection (a) above.

(d) Developer's Risk. Subject to the foregoing provisions of this Section 8.4, the Developer acknowledges and agrees that it is proceeding at its own risk and expense until such time as the Transaction Documents are approved and without any assurance that the Transaction Documents will be approved.

## **9. Representations and Warranties of the Developer.**

### **9.1 Representations and Warranties.**

The Developer represents, warrants and covenants as follows:

(a) Valid Existence; Good Standing; Joint Venture Relationships. The Developer is a limited liability company duly organized and validly existing under the laws of the State of California. The Developer has all requisite power and authority to own its property and conduct its business as presently conducted. The Developer has made all filings and is in good standing in the jurisdiction of the State of California. The managing member of the Developer is Kenwood Investments. Lennar Corporation and Interland are the other members of the Developer. Each of the Permitted Members has made all filings and is in good standing in the jurisdiction of the State of California and in the state of their respective incorporation. As of the date hereof, the Developer has not entered into any other joint venture arrangements with respect to the acquisition, management, or redevelopment of the Property. No new members may be admitted to the Developer without the approval of the then existing members and of the Authority, as further provided in Section 7.2 of this Agreement.

(b) Authority. The Developer has all requisite power and authority to execute and deliver this Agreement and the agreements contemplated by this Agreement and to carry out and perform all of the terms and covenants of this Agreement.



(c) No Limitation on Ability to Perform. Neither the Developer's articles of organization or operating agreement, nor the organization documents of the Developer's Permitted Members, nor any other agreement or law in any way prohibits, limits, or otherwise affects the right or power of the Developer to enter into and perform all of the terms and covenants of this Agreement. Neither the Developer nor its Permitted Members is a party to or bound by any contract, agreement, indenture, trust agreement, note, obligation, or other instrument which could prohibit, limit, or otherwise affect the same. No consent, authorization, or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other person or entity is required for the due execution, delivery, and performance by the Developer of this Agreement or any of the terms and covenants contained in this Agreement. There are no pending or threatened suits or proceedings or undischarged judgments affecting the Developer, its Permitted Members before any court, governmental Authority, or arbitrator which might materially adversely affect the enforceability of this Agreement, the ability of the Developer to perform the transactions contemplated by this Agreement or the business, operations, assets, or condition of the Developer or its Permitted Members.

(d) Valid Execution. The execution and delivery of this Agreement and the agreements contemplated hereby by the Developer have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms. The Developer has provided to the Authority a written resolution of the Developer authorizing the execution of this Agreement and the agreements contemplated by this Agreement.

(e) Defaults. The execution, delivery, and performance of this Agreement (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (a) any agreement, document, or instrument to which the Developer or, its Permitted Members' assets may be bound or affected, (b) any law, statute, ordinance, regulation, or (c) the articles of organization or the operating agreement of the Developer, and (ii) do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of the Developer or its Permitted Members.

(f) Meeting Financial Obligations; Material Adverse Change. Each of the Developer and its Permitted Members is meeting their respective current liabilities as they mature; no federal or state tax liens have been filed against any of them; and neither the Developer nor its Permitted Members is in default or claimed default under any agreement for borrowed money. The Developer shall immediately notify the Authority of any material adverse change in the financial condition of the Developer or its Permitted Members, and such material adverse change shall constitute a default under this Agreement, subject to the cure and remedy provisions of Section 8.

(g) Conflicts of Interest. The Developer is familiar with (i) Section 87100 et seq. of the California Government Code, which provides that no member, official, or employee of the Authority may have any personal interest, direct or indirect, in this Agreement nor shall any such member, official, or employee participate in any decision relating to this Agreement that affects her or his personal interest or the interests of any corporation, partnership or association in which she or he is interested directly or indirectly and (ii) the City's Personnel



Policy, which prohibits former City employees and consultants from working on behalf of another party on a matter in which they have participated personally and substantially unless the Authority consents to such scope of work. As to the provisions referred to in clause (i), the Developer does not know of any facts that constitute a violation of such provisions. As to the policy in clause (ii), the Developer has disclosed to the Authority in writing any and all personnel or consultants covered by such policy as of the date of this Agreement, and concurrently herewith the Authority Board has elected to waive or not to waive the conflict as to such specific personnel or consultants.

(h) Skill and Capacity. The Developer has the skill, resources, and financial capacity to acquire, manage, and fully redevelop the Property consistent with the development opportunity described in the RFQ.

(i) Not Prohibited from Doing Business. Neither the Developer nor its Permitted Members (nor any Affiliates of any of the foregoing) have been debarred or otherwise prohibited from doing business with any local, state, or federal governmental Authority.

(j) Business Licenses. Each of the Developer and its Permitted Members has obtained all licenses required to conduct its business in San Francisco and is not in default of any fees or taxes due to the City and County of San Francisco.

(k) No Claims. The Developer does not have any claim, and shall not make any claim, against the Authority and the City, or either of them, or against the Property, or any present or future interest of the Authority or the City therein, directly or indirectly, by reason of: any aspect of the RFQ or the developer selection process; the entry into this Agreement or the termination of this Agreement (except as a result of the Authority's breach, subject to the limitations set forth herein); any statements, representations, acts or omissions made by the Authority, City, or any of their respective officers, commissioners, employees, or agents with regard to the Property or any aspect of the negotiations under this Agreement; and the Authority's exercise of discretion, decision, and judgment set forth in this Agreement.

## **9.2 Continued Accuracy.**

If at any time during the Exclusive Negotiation Period any event or circumstance occurs that would render inaccurate or misleading any of the foregoing representations or warranties, the Developer shall immediately notify the Authority thereof. If the Developer does not cure such inaccuracy within thirty (30) days from the date on which the Developer was obligated to notify the Authority, the Developer shall be in breach of this Agreement and the Authority shall have the rights and remedies provided in Section 8.2.

## **9.3 Survival.**

The representations and warranties in this Section shall survive any termination of this Agreement.





10. Notices.

A notice or communication under this Agreement by either party to the other shall be sufficiently given or delivered if dispatched by hand or by registered or certified mail, postage prepaid, addressed as follows:

- (i) In the case of a notice or communication to the Authority:

Treasure Island Development Authority  
Treasure Island Project Office  
410 Avenue of the Palms, Bldg. 1, 2<sup>nd</sup> Floor  
Treasure Island, San Francisco, CA 94130  
Attn: Executive Director  
Telefacsimile: (415) 274-0299  
Telephone: (415) 274-0660

With a copy to:

Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Attn: Michael Cohen  
Telefacsimile: (415) 554-4755  
Telephone: (415) 554-4722

- (ii) And in the case of a notice or communication sent to the Developer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For the convenience of the parties, copies of notice may also be given by telefacsimile.

Every notice given to a party hereto, pursuant to the terms of this Agreement, must state (or must be accompanied by a cover letter that states) substantially the following:



- (a) the Section of this Agreement pursuant to which the notice is given and the action or response required, if any;
- (b) if applicable, the period of time within which the recipient of the notice must respond thereto;
- (c) if approval is being requested, shall be clearly marked "Request for Approval under the Treasure Island Exclusive Negotiations Agreement"; and
- (d) if a notice of a disapproval or an objection which requires reasonableness, shall specify with particularity the reasons therefor.

Any mailing address or telefacsimile number may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Agreement shall be deemed given, received, made, or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. A party may not give official or binding notice by telefacsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

## **12. General Provisions.**

### **12.1 Amendments.**

This Agreement may be amended or modified only by a written instrument executed by the Authority and the Developer.

### **12.2 Severability.**

If any provision of this Agreement, or its application to any person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Agreement or the application of such provision to any other person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so modified by and in response to such invalidation would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the fundamental purposes of this Agreement. Without limiting the foregoing, in the event that any applicable federal or state law prevents or precludes compliance with any material term of this Agreement, the parties shall promptly modify, amend, or suspend this Agreement, or any portion of this Agreement, to the extent necessary to comply with such provisions in a manner that preserves to the greatest extent possible the benefits to each of the parties to this Agreement and to the Developer before such conflict with federal or state law. However, if such amendment, modification, or suspension would deprive the Authority or the Developer of the substantial benefits derived from this Agreement or make performance unreasonably difficult or expensive, then the affected party may terminate this Agreement upon written notice to the other party. In the event of such termination, neither party shall have any further rights nor obligations under this Agreement except as otherwise provided herein.



### **12.3 Non-Waiver.**

No waiver made by either party with respect to the performance, or manner or time of performance, or any obligation of the other party or any condition to its own obligation under this Agreement will be considered a waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived to the extent of such waiver, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

### **12.4 Successors and Assigns; Third Party Beneficiary.**

This Agreement shall inure to the benefit of and bind the respective successors and assigns of the Authority and the Developer, subject to the limitations on assignment by the Developer set forth in Section 7 above. The City is an intended third party beneficiary of this Agreement, provided that no approval of the City shall be required to amend this Agreement. Except as provided above with respect to the City, this Agreement is for the exclusive benefit of the parties hereto and not for the benefit of any other person and shall not be deemed to have conferred any rights, express or implied, upon any other person.

### **12.5 Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of California. As part of the consideration for the Authority's entering into this Agreement, the Developer agrees that all actions or proceedings arising directly or indirectly under this Agreement may, at the sole option of the Authority, be litigated in courts located within the City and County of San Francisco, State of California, and the Developer expressly consents to the jurisdiction of any such local, state, or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon the Developer wherever the Developer may then be located, or by certified or registered mail directed to the Developer at the address set forth in this Agreement.

### **12.6 Attorneys' Fees and Costs.**

If either party fails to perform any of its respective obligations under this Agreement or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default or in enforcing or establishing its rights under this Agreement, including, without limitation, court costs and reasonable Attorneys' Fees and Costs (as defined below). Any such Attorneys' Fees and Costs incurred by either party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be several from the other provisions of this Agreement and to survive and not be merged into any such judgment. For purposes of this Agreement, the reasonable fees of attorneys of the Authority's General Counsel shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the Authority's General Counsel's services were rendered who practice in the City and County of



San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office. "Attorneys' Fees and Costs" means any and all attorneys' fees, costs, expenses, and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and the costs and fees associated with any other legal, administrative, or alternative dispute resolution proceeding, fees and costs associated with execution upon any judgment or order, and costs on appeal.

## **12.7 Interpretation of Agreement.**

(a) Exhibits. Whenever an "Exhibit" is referenced, it means an attachment to this Agreement unless otherwise specifically identified. All such Exhibits are incorporated herein by reference.

(b) Captions. Whenever a section, article, or paragraph is referenced, it refers to this Agreement unless otherwise specifically identified. The captions preceding the articles and sections of this Agreement have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this Agreement.

(c) Words of Inclusion. The use of the term "including," "such as," or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term, or matter.

(d) References. Wherever reference is made to any provision, term, or matter "in this Agreement," "herein" or "hereof" or words of similar import, the reference shall be deemed to refer to any and all provisions of this Agreement reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered, section or paragraph of this Agreement or any specific subdivision thereof.

(e) Recitals. In the event of any conflict or inconsistency between the recitals and any of the remaining provisions of this Agreement, the remaining provisions of this Agreement shall prevail.

(f) No Presumption Against Drafter. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.





## **12.8 Entire Agreement.**

This Agreement (including the Exhibits) contains all the representations and the entire agreement between the parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, agreements, warranties, or representations relating to such subject matter are superseded in total by this Agreement. No prior drafts of this Agreement or changes from those drafts to the executed version of this Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by either party or any other person and no court or other body shall consider those drafts in interpreting this Agreement.

## **12.9 Time for Performance.**

(a) Expiration. All performance dates (including cure dates) expire at 5:00 p.m., San Francisco, California time, on the performance or cure date.

(b) Weekends and Holidays. A performance date that falls on a Saturday, Sunday, or City holiday is deemed extended to the next working day.

(c) Days for Performance. All periods for performance specified in this Agreement in terms of days shall be calendar days and not business days, unless otherwise expressly provided in this Agreement.

(d) Time of the Essence. Time is of the essence with respect to each provision of this Agreement, including, without limitation, each milestone set forth in the attached Schedule of Performance.

## **12.10 Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

## **12.11 Approvals and Consents.**

Unless this Agreement otherwise expressly provides or unless the Community Redevelopment Law requires, all approvals, consents, or determinations to be made by or on behalf of the Authority under this Agreement shall be made by the Authority's Executive Director. Unless otherwise herein provided, whenever approval, consent or satisfaction is required of a party pursuant to this Agreement, it shall not be unreasonably withheld or delayed. The reasons for disapproval shall be stated in reasonable detail in writing. Approval by the Developer or the Authority to or of any act or request by the other shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests.

## **12.12 Real Estate Commissions.**

The Developer and the Authority each represents to the other that it engaged no broker, agent or finder in connection with this Agreement or the transactions contemplated hereby. In the event any broker, agent or finder makes a claim, the party through whom such claim is made agrees to indemnify the other party from any Losses arising out of such claim.



### **12.13 Survival.**

Notwithstanding anything to the contrary in this Agreement, any indemnity or other obligation that arises and was not satisfied before termination shall survive any termination of this Agreement, except to the extent otherwise provided herein. In the event of any termination of this Agreement (other than a termination due to a default by the Authority), the Developer shall furnish copies of studies and reports to the Authority as provided in Section 8.2(b).

### **12.14 Confidentiality of Trade Secret, Personal, Financial and Other Proprietary Information.**

The parties enter into this Agreement with the understanding that in the course of the negotiations the Authority may require or request that the Developer provide certain information that is proprietary. Such information may be necessary for the Authority to verify financial, operational, or trade secret information that is relevant to the negotiation of the Transaction Documents and that will serve the public interest in assisting the Authority to negotiate effectively. The Developer will provide such information, provided that as to such information the Developer reasonably designates as confidential or proprietary, the Authority shall not disclose such information publicly without the Developer's consent, except to the extent that the Authority is compelled to make such a disclosure under applicable law. The Authority agrees to notify the Developer of any public records request that involves information that the Developer has designated as confidential or proprietary under this Agreement. The Developer agrees to bear all the costs of any litigation that is filed to determine the applicability of the public records law to documents submitted by the Developer and designated as confidential or proprietary under this Section. The Developer acknowledges that the final drafts of the Transaction Documents proposed for approval by the Authority Commission will be made available to the public.

### **12.15 Non-Discrimination and Equal Benefits.**

(a) The Developer covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, sex, marital status, familial status, lawful source of income (as defined in Section 3304 of the San Francisco Police Code), sexual orientation, or disability against any employee or applicant for employment with the Developer, in any of the Developer's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Developer.

(b) The Developer shall include in all subcontracts relating to this Agreement a non-discrimination clause applicable to such subcontractor in substantially the form of subsection (a) above.

(c) The Developer does not as of the date of this Agreement and will not during the Exclusive Negotiation Period, in any of its operations or in San Francisco or with respect to its operations under this Agreement elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits, or travel benefits, as



well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in the Authority's Non-Discrimination in Contracts and Benefits Policy, adopted September 9, 1997, as amended February 4, 1998.

#### **12.16 Relationship of the Parties.**

The subject of this Agreement is a private development with neither party acting as the agent of the other party in any respect. None of the provisions in this Agreement shall be deemed to render the Authority a partner in the Developer's business, or joint venturer or member in any joint enterprise with the Developer.

#### **12.17 Cooperation.**

In connection with this Agreement, the Developer and the Authority shall reasonably cooperate with one another to achieve the objectives and purposes of this Agreement. In so doing, the Developer and the Authority shall each refrain from doing anything that would render its performance under this Agreement impossible and each shall do everything that this Agreement contemplates that the Party shall do to accomplish the objectives and purposes of this Agreement.



IN WITNESS WHEREOF, the Authority and the Developer have duly executed and delivered this Agreement as of the date first written above.

TREASURE ISLAND DEVELOPMENT AUTHORITY

By \_\_\_\_\_  
Anne Marie Conroy  
Executive Director

Pursuant to Authority Board Resolution No. \_\_\_\_\_,  
Adopted on \_\_\_\_\_, 2003

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

TREASURE ISLAND COMMUNITY DEVELOPMENT,  
a California limited liability company

By

By \_\_\_\_\_  
Print name \_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
Print name \_\_\_\_\_  
Its \_\_\_\_\_

*[signatures continue]*





THE FOREGOING EXCLUSIVE NEGOTIATIONS AGREEMENT (INCLUDING,  
WITHOUT LIMITATION, RECITAL M AND SECTIONS 7 AND 9.1(A)) HAS BEEN  
REVIEWED AND CONSENTED TO BY:

\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_  
Print name \_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
Print name \_\_\_\_\_  
Its \_\_\_\_\_

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\_\_\_\_\_

By \_\_\_\_\_  
Print name \_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
Print name \_\_\_\_\_  
Its \_\_\_\_\_



EXCLUSIVE NEGOTIATIONS AGREEMENT

LIST OF EXHIBITS

EXHIBIT A	Map of the Property
EXHIBIT B	Schedule of Performance
EXHIBIT C	Guaranty



## **EXHIBIT B**

### **SCHEDULE OF PERFORMANCE**

The following actions by the Developer are necessary and precedent to approval, execution and delivery of the Transaction Documents. All terms used herein shall have the same meanings provided in the Agreement. In the event of any inconsistency between this Schedule and the Agreement, the Agreement shall prevail.

In order to address a few key development issues raised by Developer's response to the RFP that are so central to the financial and regulatory structure of the Transaction Documents that they should be analyzed further before the Term Sheet negotiations are concluded, Developer will be required to complete certain additional studies regarding the proper location of the ferry terminal, the feasibility of on-site waste water treatment and peer review of Developer's geotechnical assumptions and approaches, as mutually agreed by Developer and the Authority's Executive Director (together the "Studies").

After presentation of the Studies to the TICAB and the TIDA Board, approval by the Authority Board is required at each of the following major milestones: (1) endorsement of a summary of key terms and conditions of the Transaction Documents consistent with the guidelines and requirements set forth below (the "Term Sheet"); and (2) approval of the final Transaction Documents. In addition, City actions will be required for the final Transaction Documents, including certain approvals by the City's Planning Commission and Board of Supervisors.

The parties envision that the development of the Term Sheet and Transaction Documents will be an iterative process, with interaction between them at each step along the way. The Studies will inform the completion of the Term Sheet, which will in turn guide the negotiation and preparation of the Transaction Documents. The achievement of these milestones shall be governed by the time frames set forth below and the other terms and conditions of the Agreement.

The Authority and the Developer will cooperate to provide information to the community and the public throughout the negotiations process and to provide opportunities for community review, including through the TICAB, prior to the actions or approvals of these three major milestones.



<u>Event</u>	<u>Required Completion Date</u>
1. Completion of the Studies.	120 days (4 months) from the Effective Date of the Agreement)
2. Completion of a Term Sheet mutually agreeable to Developer and Authority Executive Director.	240 days (8 months) from the Effective date of the Agreement
3. Authority Board endorsement of Term Sheet, after TICAB review.	300 days (10 months) from the Effective Date of the Agreement
4. Completion of final drafts of Transaction Documents mutually agreeable to Developer and Authority Executive Director.	150 days (5 months) after Authority Board endorsement of the Term Sheet (estimated to be 450 days (15 months) from the effective date of the Agreement)
5. Approval of Transaction Documents by Authority Board and City's Board of Supervisors, after community review by TICAB, and after the completion of all required environmental review under CEQA and the adoption of a final redevelopment plan for the Property, and subject to all applicable Regulatory Approvals.	240 days (8 months) after Authority board endorsement of the Term Sheet (estimated to be 540 days (18 months) from the Effective Date of the Agreement), subject to extensions of the Exclusive Negotiation Period pursuant to the Extension Option and certain events of Force Majeure, as set forth in the Agreement, but in no event later than the Upset Date set forth in the Agreement.





A. Required Contents of Term Sheet. The Term Sheet shall set forth the basic development guidelines, financial framework and other key terms and conditions of the Transaction Documents. The Term Sheet shall comprehensively address, at a minimum, the following:

- Further refinements to the land use plan for the Property, including the final boundaries of Developer's project, more detail regarding non-residential uses of the Property, and the key elements of the Design for Development ("DFD") and design review and application procedures that will govern the vertical development of the Property.
- The amount of parking to be provided for each type of use and the manner in which parking will be provided, including the feasibility of shared parking facilities and the location (both initially and for later stages of development) of the main ferry terminal for the Property.
- Based on further input from staff of the State Lands Commission, any further revisions to Developer's overall land use plan for the Property necessary to support a Tidelands Trust exchange mutually agreeable to Developer and the Authority.
- Based on peer review of the geotechnical assumptions and solutions underlying Developer's plan, any further revisions to Developer's overall land use plan for the Property necessary to address issues raised by such peer review.
- Further refinements to the phasing plan for development of the Property, including a more detailed schedule of performance.
- Description of a transition plan regarding the relocation of existing uses and residents and TIHDI programs, and how the Developer plans to manage construction in close proximity to existing residential uses.
- Further refinements to the infrastructure plan for the Property, including the means for treating wastewater.
- Further refinements to the financing plan, including more detail regarding the means of financing the construction and maintenance of public infrastructure, open space and community and cultural facilities.
- Description of the material business terms for the transaction, including the nature of the Authority's participation in project revenues, based on a mutually agreeable development pro-forma showing anticipated revenues and expenses of the proposed project for the full build-out period (by phase and product type).
- Further refinements to the public open space and recreation plan, including more detail regarding the programming of open space and the anticipated costs and sources of revenues for maintaining such open space.
- Further refinements to the affordable housing plan, including more information about the specific means of financing all major aspects of the affordable housing plan.
- Description of a comprehensive community benefits program that is consistent with the TIHDI Agreement and addresses, among other things, permanent and construction jobs programs and the location and type of community facilities.
- Further refinements of how the Developer will provide the Authority adequate assurances that it has the financial wherewithal and commitment to fulfill the financial, indemnification and other performance obligations of the Developer under the Transaction Documents, including, by way of example only and without limitation, guaranties from suitable entities, performance deposits, and/or surety bonds that are appropriate for the guaranteed obligations.
- A description of Developer's operating agreement by and among its constituent partners, including relative roles, rights and responsibilities.
- The key terms and conditions of the Sublease.



At the same time the Term Sheet is submitted to the Authority and the TICAB for consideration, but separately and based on separate policy based considerations of the issues with the TIDA Board, staff shall submit to the TIDA Board recommendations regarding relocation assistance programs for existing residents and potential preferences in new housing, if any.

B. Required Contents of Transaction Documents. The Transaction Documents shall address the matters described in Section 1.2(e) of the Agreement.



## EXHIBIT C

### NAVAL STATION TREASURE ISLAND EXCLUSIVE NEGOTIATIONS AGREEMENT

#### GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT (this "Guaranty") dated as of \_\_\_\_\_ 2003, is made by LENNAR CORPORATION, a Delaware corporation ("Lennar Corporation"), and LNR PROPERTY CORPORATION, a Delaware corporation ("LNR Property Corporation") (Lennar Corporation and LNR Property Corporation are collectively and individually referred to herein as "Guarantor"), to and for the benefit of the TREASURE ISLAND DEVELOPMENT AUTHORITY (the "Authority"). Unless otherwise defined in this Agreement, all initially capitalized terms used in this Agreement shall have the meanings given them in the Exclusive Negotiations Agreement (as described in Paragraph A of the Recitals, below).

THIS GUARANTY is made with reference to the following facts and circumstances:

A. The Authority and Treasure Island Community Development, LLC, a California limited liability company, (the "Developer"), are entering into an Exclusive Negotiations Agreement dated on or about the same date as this Guaranty for the redevelopment of Naval Station Treasure Island (the "Exclusive Negotiations Agreement").

B. Guarantor will derive material financial benefit from the Exclusive Negotiations Agreement. As an essential inducement for the Authority to enter into the Exclusive Negotiations Agreement, the Guarantor is entering into this Guaranty, whereby Guarantor agrees to guaranty payment and performance of the obligations of the Developer under the Exclusive Negotiations Agreement up to a maximum amount of Five Million Dollars (\$5,000,000). The guaranty of payment is being provided on a pro rata basis by Lennar Corporation and LNR Property Corporation and the obligation of each of them shall be limited to one-half of such maximum amount.

ACCORDINGLY, in consideration of the matters described in the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the Guarantor agrees as follows:

#### 1. Guaranty

1.1 Guaranty of Obligations. Guarantor unconditionally and irrevocably guarantees to the Agency the due and punctual payment (and not merely the collectibility) and performance of the Guaranteed Obligations (as defined in Section 1.2 below), as and when the same shall become due and payable, on the terms provided in this Guaranty, provided that in no event shall the sum payable by Guarantor under this Agreement for the Guaranteed Obligations exceed a total of Five Million Dollars (\$5,000,000) and further provided that any Guaranteed Obligations



due and payable hereunder shall be paid on a pro rata basis by Lennar Corporation and LNR Property Corporation (i.e. Lennar Corporation and LNR Property Corporation will each pay \$0.50 of every \$1.00), with each such corporation responsible for no more than Two Million Five Hundred Thousand Dollars (\$2,500,000) of the Guaranteed Obligations. In addition, Guarantor shall pay, and upon request of Agency shall promptly reimburse Agency for, all costs and expenses (including, without limitation, collection charges and Attorneys' Fees and Costs, as defined in Section 9.8 below) incurred by the Agency (collectively, the "Reimbursement Amount") in connection with the enforcement of the Agency's rights, powers, or remedies under this Guaranty, whether or not suit is brought. The Reimbursement Amount shall not be included within the Five Million Dollar (\$5,000,000) cap set forth above. Any delinquent payment for the Guaranteed Obligations and the Reimbursement Amount shall be accompanied by interest on such amounts at the lesser of ten percent (10%) per annum or the maximum amount permitted by law, from the date due through and including the date of payment of such amounts (calculated on the basis of a 365-day year for the actual number of days elapsed). Guarantor's guaranty of payment of the Guaranteed Obligations shall be discharged and satisfied only as provided in Section 7 relating to termination of this Guaranty.

1.2 Definition of Guaranteed Obligations. For purposes of this Guaranty, "Guaranteed Obligations" shall mean all of the obligations of Treasure Island Community Development, LLC, a California limited liability company, (the "Developer"), which is the Developer under the Exclusive Negotiations Agreement (the "Obligor"), under the Exclusive Negotiations Agreement.

1.3 Acknowledgments by Guarantor. Guarantor acknowledges, confirms, and agrees that: (a) it has received fair and adequate consideration for its execution of this Guaranty; (b) it will derive material financial benefit from the Authority's execution of the Exclusive Negotiations Agreement; (c) the Authority's agreement to enter into the Exclusive Negotiations Agreement and take the actions required in connection therewith is in consideration of, and in reliance upon, the Guarantor's execution and delivery of this Guaranty; and (d) there are no conditions to the full effectiveness of this Guaranty other than those expressly set forth in this Guaranty.

1.4 Independent Obligations; Continuing Guaranty. Subject to the maximum amount set forth herein and the provisions of this Guaranty, this Guaranty is a primary and original obligation of Guarantor and is an absolute, unconditional, continuing and irrevocable guaranty of payment.

## 2. Indemnity

2.1 Indemnity. Subject to the limitation on the maximum amount of the Guaranteed Obligations hereunder set forth in Section 1.1 above (exclusive of Attorney's Fees and Costs and any Reimbursement Amount) Guarantor agrees to indemnify, defend and hold Authority, City and their respective officers, directors, commissioners, employees and agents (collectively, the "Indemnified Parties") harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, causes of action, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, Attorneys' Fees





and Costs as hereinafter defined) arising in connection with any investigative, administrative or judicial proceeding, that may be imposed on, incurred by or asserted against such Indemnified Party, in any manner relating to or arising out of or in connection with the payment or enforcement of this Guaranty (collectively, the "Indemnified Liabilities"). Notwithstanding the foregoing, Indemnified Liabilities shall not include (a) liabilities, obligations, losses, damages, penalties, actions, causes of action, judgments, suits, claims, costs, expenses and disbursements to the extent caused by or resulting from the willful misconduct or negligence of such Indemnified Party, including, without limitation, a willful breach of any obligations of the Authority under the Exclusive Negotiations Agreement or (b) consequential damages arising from any actual losses relating to an indemnified claim. Guarantor agrees to defend the Indemnified Parties against any claims that are actually or potentially within the scope of the indemnity provisions of this instrument, even if such claims may be groundless, fraudulent or false.

2.2 Notice. The Indemnified Parties agree to give prompt notice to Guarantor with respect to any suit or claim initiated or threatened against the Indemnified Parties, at the address for notices of Guarantor set forth in this Guaranty, and in no event later than the earlier of (a) ten (10) days after valid service of process as to any suit or (b) fifteen (15) days after receiving written notification of the filing of such suit or the assertion of such claim, which the Indemnified Party has reason to believe is likely to give rise to a claim for indemnity hereunder. If prompt notice is not given to Guarantor, then Guarantor's liability hereunder shall terminate as to the matter for which such notice is not given, provided that failure to notify the Guarantor shall not prejudice the rights of the Indemnified Party hereunder unless the Guarantor is prejudiced by such failure, and then only to the extent of such prejudice. The Guarantor shall, at its option but subject to the reasonable consent and approval of the Indemnified Party, be entitled to control the defense, compromise or settlement of any such matter through counsel of the Guarantor's own choice; provided, however, that in all cases the Indemnified Party shall be entitled to participate in such defense, compromise, or settlement at its own expense. If the Guarantor shall fail, however, in the Indemnified Party's reasonable judgment, within a reasonable time following notice from the Indemnified Party alleging such failure, to take reasonable and appropriate action to defend, compromise or settle such suit or claim, the Indemnified Party shall have the right promptly to hire counsel at the Guarantor's sole expense to carry out such defense, compromise or settlement, which expense shall be immediately due and payable to the Indemnified Party upon receipt by the Guarantor of a properly detailed invoice therefor.

### 3. Waivers by Guarantor

3.1 Waivers. Guarantor waives: notice of acceptance of this Guaranty; notice of the amount of the Guaranteed Obligations (subject, however, to Guarantor's right to make inquiry of the Authority to ascertain the then outstanding amount of the Guaranteed Obligations at any reasonable time); notice of any other fact that might increase the Guarantor's risk; and notice of presentment for payment, demand, protest and notice of protest, notice of dishonor, diligence in collection and notice of nonpayment as to any instrument. Guarantor also waives any and all rights, by statute or otherwise, to require the Authority to institute suit against the Obligor or to exhaust any of the Authority's rights, powers or remedies against such Obligor.



3.2 Waiver of Subrogation. Upon satisfaction in full of all of the Guaranteed Obligations, Guarantor shall be subrogated to the rights of the Authority against the Obligor with respect to the Guaranteed Obligations, and the Authority agrees to take such steps as Guarantor may reasonably request to implement such subrogation (provided Guarantor shall pay Authority Transaction Costs incurred with respect thereto pursuant to the Exclusive Negotiations Agreement and that the Authority shall not incur any liabilities in taking any such steps).

#### 4. Consents by Guarantor

4.1 Consents; No Discharge of Obligations. Without releasing, discharging, impairing, or otherwise affecting any obligations of Guarantor under this Guaranty or the validity or enforceability of this Guaranty, the Authority may, by action or inaction, in its sole, absolute and unlimited discretion and without notice to Guarantor: compromise, settle, extend the time for payment or performance of all or any part of the Guaranteed Obligations; refuse or fail to enforce all or any portion of the Authority's rights, powers or remedies under any of the documents; and deal in all respects with Guarantor as if this Guaranty were not in effect; provided, however, the Authority shall not have the right by agreement with Guarantor otherwise to increase the Guaranteed Obligations without the Guarantor's prior written consent. It is the intent of the parties that Guarantor shall remain liable for the payment and performance of the Guaranteed Obligations and all other obligations guaranteed hereby, notwithstanding any act or thing that might otherwise operate as a legal or equitable discharge of a surety.

4.2 Payments to Other Persons. The Authority shall be under no obligation to marshal any assets in favor of Guarantor or against, or in payment or performance of, any or all of the Guaranteed Obligations. If all or any part of any payment to or for the benefit of the Authority in respect of the Guaranteed Obligations shall be invalidated, declared to be fraudulent or preferential, set aside, or required for any reason to be repaid or paid over to a trustee, receiver or other person (a "trustee") under any insolvency law or any other law or rule of equity (collectively, "set aside"), to the extent of that payment or repayment, the Guaranteed Obligations (or the part thereof) intended to have been satisfied shall be revived and continued in full force and effect as if that payment had not been made, and Guarantor shall be primarily and jointly and severally liable for that obligation, provided that nothing hereunder shall preclude the Guarantor from obtaining a refund from a trustee.

4.3 Additional Rights. This Guaranty is in addition to, and not in substitution for or in reduction of, any other guaranty by Guarantor or any obligation of Guarantor under any other agreement or applicable law that may now or hereafter exist in favor of the Authority. The liability of Guarantor under this Guaranty shall not be contingent upon the enforcement of any lien or realization upon the security, if any, the Authority may at any time possess with respect to the Guaranteed Obligations.

4.4 Recourse. The Authority shall have the right to seek recourse against Guarantor to the full extent provided for in this Guaranty, which right shall be absolute and shall not in any way be impaired, deferred, or otherwise diminished by reason of any inability of the Authority to claim any amount of such Guaranteed Obligation from Guarantor as a result of bankruptcy or



otherwise, including, but not limited to, any limitation on the Authority's claim from Guarantor under section 502(b)(6) of the United States Bankruptcy Code, as amended (11 U.S.C. §502(b)(6)). No election to proceed in one form of action or proceeding, or against any person, or on any obligation, shall constitute a waiver of the Authority's right to proceed in any form of action or proceeding or against other persons unless Authority has expressly waived that right in writing.

5. Representations and Warranties of Guarantor

5.1 Representations and Warranties. Guarantor represents, warrants and covenants as follows:

(a) Guarantor has full power and authority to execute, deliver and perform its obligations under this Guaranty, and that execution, delivery, and performance has been duly authorized by all requisite action on its part.

5.2 Independent Investigation. Guarantor has performed its own independent investigation as to the matters covered by this Guaranty.

6. Termination of Guaranty.

Guarantor's liability under this Guaranty shall be discharged and satisfied, and Guarantor shall be relieved of any and all further obligations under this Guaranty, upon the later of (a) termination of the Exclusive Negotiations Agreement and (b) payment in full of the Guaranteed Obligations together with any and all other amounts payable by Guarantor under this Guaranty (including any Reimbursement Amounts); provided, however, no such event shall result in termination of this Guaranty unless and until the expiration of any further period within which a trustee or other similar official in an action under any insolvency law may avoid, rescind, or set aside any payment of any of the Guaranteed Obligations. Upon Guarantor's request the Authority will confirm in writing the fact of termination of this Guaranty if this Guaranty has terminated.

7. Notices

A notice or communication under this Agreement by either party to the other shall be sufficiently given or delivered if dispatched by hand or by registered or certified mail, postage prepaid, addressed as follows:

- (i) In the case of a notice or communication to the Authority:

Treasure Island Development Authority  
Treasure Island Project Office  
410 Avenue of the Palms, Bldg. 1, 2<sup>nd</sup> Floor  
Treasure Island, San Francisco, CA 94130  
Attn: Executive Director  
Telefacsimile: (415) 274-0299  
Telephone: (415) 274-0660



With a copy to:

Office of the City Attorney  
Room 234, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: Michael Cohen  
Telefacsimile: (415) 554-4755  
Telephone: (415) 554-4722

- (ii) And in the case of a notice or communication sent to Guarantor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telefacsimile: \_\_\_\_\_  
Telephone: \_\_\_\_\_

And to:

\_\_\_\_\_  
\_\_\_\_\_

San Francisco, CA 941\_\_\_\_  
Telefacsimile: (415) \_\_\_\_\_  
Telephone: (415) \_\_\_\_\_

For the convenience of the parties, copies of notice may also be given by telefacsimile.

Every notice given to a party hereto, pursuant to the terms of this Agreement, must state (or must be accompanied by a cover letter that states) substantially the following:

- (a) the Section of this Agreement pursuant to which the notice is given and the action or response required, if any;
- (b) if applicable, the period of time within which the recipient of the notice must respond thereto;
- (c) if approval is being requested, shall be clearly marked "Request for Approval under the Naval Station Treasure Island Guaranty Agreement"; and
- (d) if a notice of a disapproval or an objection which requires reasonableness, shall specify with particularity the reasons therefor.

Any mailing address or telefacsimile number may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the





effective date of the change. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. A party may not give official or binding notice by telefacsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

## 8. General Provisions

8.1 Successors and Assigns. This Guaranty shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.

8.2 Amendments. Except as otherwise provided herein, this Guaranty may be amended or modified only by a written instrument executed by the Authority and Guarantor..

8.3 Waivers. No action taken pursuant to this Guaranty by the Authority shall be deemed to be a waiver by that party of the Guarantor's compliance with any of the provisions hereof. No waiver by the Authority of any breach of any provision of this Guaranty shall be construed as a waiver of any subsequent or different breach. No forbearance by the Authority to seek a remedy for noncompliance hereunder or breach by the Guarantor shall be construed as a waiver of any right or remedy with respect to such noncompliance or breach.

8.4 Continuation and Survival of Covenants. Subject to Section 6 above, all covenants by Guarantor contained herein shall be deemed to be material and shall survive any termination of the Exclusive Negotiations Agreement or portion thereof if the obligations thereunder have arisen and are not satisfied before such date.

8.5 Governing Law; Selection of Forum. This Guaranty shall be governed by and construed in accordance with the laws of the State of California. As part of the consideration for the Exclusive Negotiations Agreement, the Guarantor agrees that all actions or proceedings arising directly or indirectly under this Guaranty may, at the sole option of Authority, be litigated in courts located within the State of California, and the Guarantor expressly consents to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon the Guarantor wherever the Guarantor may then be located, or by certified or registered mail directed to the Guarantor at the address set forth in this Guaranty for the delivery of notices.

8.6 Merger of Prior Agreements. The parties intend that this Guaranty (including all of the attached exhibits and schedules, which are incorporated into this Guaranty by reference) and the Exclusive Negotiations Agreement shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings. The parties further intend that this Guaranty shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including, without limitation, prior drafts or changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Guaranty.



8.7 Interpretation of Guaranty. The section and other headings of this Guaranty and the table of contents are for convenience of reference only and shall not affect the meaning or interpretation of any provision contained herein. Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. To the extent the recitals contained herein are inconsistent with the operative provisions of this Guaranty, the operative provisions shall control. This Guaranty has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Guaranty against the party that has drafted it is not applicable and is waived. The provisions of this Guaranty shall be interpreted in a reasonable manner to effect the purposes of the parties and this Guaranty.

8.8 Attorneys' Fees and Costs. Should any party institute any action or proceeding in court to enforce any provision hereof or for damages by reason of an alleged breach of any provision of this Guaranty, the prevailing party shall be entitled to receive from the losing party court costs or expenses incurred by the prevailing party including, without limitation, expert witness fees and costs, travel time and associated costs; transcript preparation fees and costs; document copying expenses; exhibit preparation costs; carrier expenses and postage and communications expenses; such amount as a court or other decision maker may adjudge to be reasonable attorneys' fees for the services rendered to the prevailing party in such action or proceeding; fees and costs associated with execution upon any judgment or order; and costs on appeal and any collection efforts. For purposes of this Guaranty, the reasonable fees of attorneys and any in-house counsel for the City, the Authority and the Guarantor shall be based on the fees regularly charged by private attorneys with the equivalent number of years of professional experience in the subject matter area of the law for which the City's or the Authority's in-house counsel's services were rendered who practice in the City and County of San Francisco in law firms with approximately the same number of attorneys as employed by the City or the Authority.

8.9 Severability. Invalidity of any provision of this Guaranty, or of its application to any Person, by judgment or court order, shall not affect any other provision of this Guaranty or its application to any other Person or circumstance, and the remaining portions of this Guaranty shall continue in full force and effect, unless enforcement of this Guaranty as invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Guaranty.

8.10 Joint and Several Liability. The obligations of Guarantor are joint and several. As used herein, "Lennar Corporation" and "LNR Property Corporation" includes their successors and assigns. No failure or inability of Lennar Corporation or LNR Property Corporation to pay any or all of its portion of the Guaranteed Obligations hereunder shall relieve the other entity of its obligations under this Guaranty.

8.11 Counterparts. This Guaranty may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.



IN WITNESS WHEREOF, Guarantor, being duly authorized, has executed and delivered this Guaranty as of the date first written above.

GUARANTOR

LENNAR CORPORATION,  
a Delaware corporation

By \_\_\_\_\_  
Print Name \_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
Print Name \_\_\_\_\_  
Its \_\_\_\_\_

LNR PROPERTY CORPORATION,  
a Delaware corporation

By \_\_\_\_\_  
Print Name \_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
Print Name \_\_\_\_\_  
Its \_\_\_\_\_

*[Signatures continue]*



ACCEPTED AND AGREED:

TREASURE ISLAND DEVELOPMENT AUTHORITY

By \_\_\_\_\_  
Annemarie Conroy  
Executive Director

APPROVED AS TO FORM:

DENNIS J. HERRERA,  
City Attorney

\_\_\_\_\_  
Michael Cohen  
Deputy City Attorney







# Notes

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**TREASURE ISLAND DEVELOPMENT AUTHORITY**

410 AVENUE OF THE PALMS,  
BLDG. ONE, 2<sup>ND</sup> FLOOR, TREASURE ISLAND  
SAN FRANCISCO, CA 94130  
(415) 274-0880 FAX (415) 274-0299  
WWW.SFGOV.ORG/TREASUREISLAND

**DRAFT** Minutes of Meeting  
Treasure Island Development Authority  
April 9, 2003

City Hall, Room 400  
1 Carlton B. Goodlett Place  
San Francisco, CA

DOCUMENTS DEPT.

MAY 9 2003

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**1. Call to order: 1:40 PM**

**Roll Call Present:** Claudine Cheng (Chair)

John Elberling  
Gerald Green  
Susan Po-Rufino  
Marcia Rosen  
Douglas Wong

**Excused:** William Fazande (Vice-Chair)

2. The minutes of the March 12, 2003 TIDA meeting were motioned for approval by Commissioner Rosen, the motion was seconded by Commissioner Elberling  
The minutes were approved unanimously

**3. Director's Report given by Executive Director Annemarie Conroy:**

**Public Use:** S.F. Golden Gate Rugby Club using T.I. field, Oakland and Skyline High Schools holding their proms in Building 1, Treasure Island Sailing Center using Building 1 for a fund-raiser, TIHDI using Building 1 for a Comedy Night fundraiser

**Environmental cleanup status:** productive meetings with U.S. Navy regarding early transfer and environmental issues

**Short term leases:** no new short-term leases

**Caltrans/Bay Bridge:** no new issues

**Community Issues:** TIHDI holding event on May 1<sup>st</sup>, Sailing Center opening day and Sailor's Ball on April 26<sup>th</sup>, Child Care Center now open

**Citizens' Advisory Board:** CAB met March 20<sup>th</sup> to hear presentation by Almar Marinas and Treasure Island Enterprises on design concept for marina

**TIHDI Report:** Child Care Center now open

**Financial report:** Revenues at \$7.1 million which is 74% of projected revenues, Expenses at \$4.1 million, on track with expenses and there is a number of lagging posting of payments to other City Departments

**Legislation:** no current legislative hearings affecting Treasure Island

4. The TIDA Board received communications in the previous month from the Soul of America Project (2 letters), the Treasure Island Homeless Development Initiative and the San Francisco Boardsailing Association.

5. There was no ongoing business discussed by the Commission

6. General Public Comment

Ms. Nancy O'Rourke, of Kidango, spoke regarding the opening of the Child Care Center on Treasure Island. Center opened on March 24<sup>th</sup> and they really appreciate the support of TIDA and TIDA staff to get center open as quickly as possible. Invited the TIDA Board to the Grand Opening May 9<sup>th</sup> at 9:30 am. Currently 20 children enrolled and more enrolling every day.

Ms. Carissa Harris-Adamson, of the Treasure Island Sailing Center, invited the TIDA Board to the Sailing Center's Opening Day and Sailor's Ball, both held on April 26<sup>th</sup>. Plans for summer program underway, hope for an enrollment of 450 kids for this summer.

Ms. Karen Knowles-Pearce, CAB Chair, spoke regarding approval of the Exclusive Negotiating Agreement with Treasure Island Community Development. Believes there was lots of public discussion on the development proposal through various CAB meetings and subcommittee meetings. Commissioner Green joined the Commission at 1:50 pm

7. Commissioner Cheng asked Commissioner Elberling to take the chair for the election of officers since she is currently an officer.

Commissioner Elberling asked for the nominations for TIDA Board officers

Director Conroy stated that Claudine Cheng had been nominated for Chair, and William Fazande had been nominated for Vice-Chair. The nominations were submitted by other TIDA Board members.

Commissioner Elberling asked if there were any other nominations and there were none

There was no public comment on this item

Commissioner Elberling asked for a vote on approval of Claudine Cheng as Chair and William Fazande as Vice-Chair

Commissioner Cheng and Commissioner Fazande were re-elected unanimously

**13. Item called out of order**

Stephen Proud, TIDA Deputy Director, spoke regarding authorizing an Exclusive Negotiating Agreement (ENA) between TIDA and Treasure Island Community Development (TICD). Gave a brief history of the Request for Qualifications (RFQ) and Request for Proposal (RFP) processes for redevelopment of Treasure and Yerba Buena Islands, including public review and review by other government agencies. Stated that Deputy City Attorneys Michael Cohen and Donnell Choy had worked very hard with TICD in drawing up this ENA document. Document gives some security to TICD in that TICD knows that TIDA is not negotiating with any other entities for the redevelopment of the Islands. Maximum term for negotiating period, should extensions be exercised, is 30 months. ENA outlines obligations of two parties and sets forth items that will be subject to negotiation during negotiating agreement. Transaction costs paid by both the developer and TIDA. TIDA costs are considered an equity contribution to the project and TIDA wants to look for an equity return on their contributions, as would the developer. Developer also responsible for extraordinary transaction costs beyond ordinary costs incurred by TIDA.

Michael Cohen, Deputy City Attorney, stated that this ENA still doesn't grant the developer any development rights; it is simply the beginning of the process, which is expected to be 18 months. Doesn't want people to think that development deal is completed.

Commissioner Cheng asked for clarification on transaction costs

Mr. Proud stated that the TIDA budget for professional services should be able to cover these costs, however in an unforeseen event, TIDA is able to go to the developer and access up to \$1.8 million of their funds in order cover these costs. TIDA will provide an accounting of these unforeseen funds every 6 months to the developer, which they are obligated to pay.

Mr. Cohen stated that distribution of costs will be an important part of negotiating agreement. One of early elements of negotiations will be deciding on a cap for these costs on both sides.

Commissioner Cheng stated that the interpretation of public and community benefits should extend beyond solely the City and County of San Francisco to include benefits for the entire Bay Area.

Commissioner Rosen commended TIDA staff for a comprehensive and well written ENA document. Also stated that there is still a need to provide fiscal assurances during implementation phase of project. Stated that the Board of Supervisors should be mentioned as part of the transaction process as well. Stated her comments are simply for clarification purposes.

Commissioner Green asked for clarification regarding the staff summary which in the section reviewing parking indicated the need for "better urban design". Asked if this was indicative of the proposal as a whole or simply in terms of parking design and issues.

Mr. Proud indicated that there may be ways to address the parking program in a better way than what is currently proposed. The parking issue has come up in every public meeting and TIDA and CAB meetings as well. Staff believes that parking should be addressed as its own stand-alone item on the term sheet.

#### Public Comment

Ms. Sherry Williams, Executive Director of TIHDI, stated her support for authorization of the ENA. Also stated that she would like to see the term sheet language reflect replacement units versus relocation units and the discrepancy of the total number of these units. Also stated that the review period has been quite exhaustive and all people involved with Treasure Island have been able to participate.

Mr. Proud stated that staff would be happy to make that amendment to the term sheet

Commissioner Elberling requested that bullet points not be used on term sheet and instead give each topic numbers or letters

Executive Director Conroy thanked Sherry Williams and Karen Knowles-Pierce for their "incredible efforts" in working with the developer and also during the public review process of the focused RFP. Stated that the CAB's work on the focused RFP was "unprecedented" in their ability to work together and also to put in an unbelievable amount of time on this. Stated that the CAB, THIDI, and the developer all need to be recognized for the amount of work they have all put into this effort so far.

Commissioner Po-Rufino stated that she would like the recitals in this resolution to reflect the correct amount of public meetings and amend it from 16 public meetings to over 30.

Commissioner Green moved for approval of the amended resolution, along with the agreed modification of the term sheet. Commissioner Rosen seconded the motion

The item was approved unanimously

Commissioner Cheng thanked everyone involved with this process so far

8. Ms. Eila Arbuckle, TIDA Finance Manager, spoke regarding the approval of a contract with Toolworks for janitorial and building maintenance services. Toolworks provides employment and training opportunities for handicapped individuals. Contract is for the same amount as last year. There are 4 full time employees and 1 full time supervisor employed at all times.

Ms. Eugene Fitzgerald of Toolworks thanked the TIDA Board for the opportunity to provide training to Toolworks staff through the contract with TIDA.

There was no public comment on this issue

Commissioner Elberling motioned for approval of the item, Commissioner Green seconded the motion  
The item was approved unanimously

9. Ms. Eila Arbuckle, TIDA Finance Manager, spoke regarding the approval of a contract with Rubicon Enterprises for landscaping services on Treasure and Yerba Buena Island. Contract is for the same amount as last year.

Mr. Don Waxman of Rubicon Enterprises thanked the Authority for their work in the past with Rubicon and also stated that several TIHDI referred employees have gone on through Rubicon to long term full time jobs.

Executive Director Conroy complimented Lowell Young of Rubicon. Stated that landscaping on Treasure Island and Yerba Buena Island looks magnificent thanks to Lowell's efforts.

Commissioner Rosen stated that minimum compensation has been raised to \$10, and Rubicon fact sheet states that their compensation is between \$9 and \$13 an hour. Wondered if this simply hasn't been updated.

Mr. Waxman stated that formal notification is necessary in the Compensation Ordinance and if this is the case they will certainly renegotiate

Ms. Arbuckle stated that there may be some provisions to this when the employer provides health insurance

There was no public comment on this item

Commissioner Rosen motioned for approval of the item, Commissioner Cheng seconded the motion  
The item was passed unanimously

#### **10 and 11. *Items called together***

Mr. Stephen Proud, TIDA Deputy Director, spoke regarding amendments to the Master Lease with the United States Navy and the sublease between TIDA and Kidango, to incorporate land use controls related to use of the child care center property. Amendments are a series of land use controls which speak to issues such as digging in soil, use of ground water, ground breaking activities and how to obtain dig permits for utilities issues. These issues were addendums to lease and sublease, and these amendments now incorporate issues into the actual lease.

Ms. Nancy O'Rourke, of Kidango, stated that Kidango has reviewed all these restrictions and are comfortable with them

There was no public comment on this item

Commissioner Po-Rufino motioned for approval of both items, Commissioner Green seconded both motions  
The items were both approved unanimously

12. Mr. Stephen Proud, TIDA Deputy Director, spoke regarding a one year extension of the month-to-month sublease with Rex Liu for operation of the photo booth on Treasure Island. The lease has been in place for several years, no substantive changes to the lease or usage of the property

Commissioner Elberling asked if staff knew Mr. Liu's gross sales

Mr. Proud stated that staff does not know Mr. Liu's sales. Mr. Liu constructed and owns the building and simply rents the small amount of space on which the booth sits. Staff felt it was important to allow people who had business opportunities on Treasure Island when it was an operating base, such as Mr. Liu, to continue once the base was closed.

Director Conroy stated that the business is weather driven and in inclement weather there are very few customers

Mr. Proud stated that upon the Board's direction Mr. Liu could be required to report his earnings on a monthly or quarterly basis

Commissioner Elberling stated that he would like to see that happen

There was no public comment on this item

Commissioner Elberling motioned for approval of the item with an amendment to the sublease that Mr. Liu report his gross sales, Commissioner Rosen seconded the motion  
The item was approved unanimously

14. Commissioner Rosen requested that an agenda item at the May TIDA meeting be a presentation by TIDA staff of the various timelines regarding the development and environmental projects at Treasure Island and Yerba Buena Island.

15. The meeting was adjourned at 2:51 p.m. Commissioner Cheng adjourned the meeting in memory of the father of TIDA staff member Marianne Conarro











